



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 KOOTENAY HOMES (2018) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled for 11:00 a.m. on this date to deal with a tenant's application to cancel a One Month Notice to End tenancy for Cause ("1 Month Notice") via teleconference call.

The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for approximately 18 minutes to give the tenant sufficient opportunity to appear.

The landlord's agent confirmed the landlord received the tenant's proceeding package and was prepared to proceed.

The landlord's agent testified that the landlord's evidence was sent to the tenant via registered mail on December 17, 2021, and it was successfully delivered on December 24, 2021. The landlord provided the registered mail tracking number as proof of service. I was satisfied the landlord served its evidence to the tenant and I admitted it for consideration in making this decision.

Although the tenant did not appear at the hearing, I proceeded to hear from the landlord as the landlord bears the onus to prove a valid notice to end tenancy was served and there was a basis for its issuance in keeping with *M.B.B v. Affordable Housing Charitable Association*, 2018 BCSC 2418.

On a procedural notice, the tenant had indicated on his Application for Dispute Resolution that he was also seeking to cancel a 10 Day Notice to End tenancy for Unpaid Rent or Utilities ("10 Day Notice"). I noted that neither party had provided a copy of a 10 Day Notice. The landlord's agent stated they did not serve the tenant with a 10 Day Notice.

On another procedural note, the tenant did not record the landlord's full name and the landlord's name was amended to reflect that appearing in the tenancy agreement and the 1 Month Notice. The landlord named in this proceeding is the corporate property management company retained by the owner of the property to act as his agent.

Issue(s) to be Decided

1. Should the 1 Month Notice be cancelled or upheld?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy started on March 1, 2020, and the landlord collected a security deposit of \$350.00. The tenant is required to pay rent of \$700.00 on the first day of every month pursuant to the tenancy agreement.

By way of this Application for Dispute Resolution, the tenant seeks to dispute a 1 Month Notice that was served upon him on September 13, 2021. In filing the dispute the tenant indicates that the rental unit was tidy.

The 1 Month Notice has an effective date of October 31, 2021, and indicates several reasons for ending the tenancy, as set out below:

Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)

- ☐ Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- ☐ Tenant is repeatedly late paying rent
- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☒ put the landlord's property at significant risk
- ☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
- ☒ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- ☒ Tenant has not done required repairs of damage to the unit/site/property/park
- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Cause section of the 1 Month Notice, the landlord wrote:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc.
This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

After multiple warnings regarding the lack of cleanliness the unit is still excessively dirty. Other tenants are complaining about the smell coming from the unit. Signs of mice + silverfish. Bathroom floor is rotting due to excessive amount of water being left from shower + toilet.

- Multiple warnings about blocking the fire exit for other tenants from both owner + property manager yet had chair blocking exit Sept 13/2021 when inspection was booked.

During the hearing, the landlord's agent confirmed that the primary issue is the excessively dirty condition in which the tenant maintains the rental unit. Secondly, the tenant's actions or neglect have caused the floor in the bathroom to rot.

The landlord's agent described how complaints from other tenants at the property have been received with respect to the horrible smell emanating from the rental unit. The landlord has inspected the rental unit almost monthly with a view to working with the tenant to improve the condition in which he maintains the unit but that it has not improved. After the 1 Month Notice was served, the landlord continued to inspect the unit so as to protect the property and the tenant has become increasingly difficult to deal with, including refusing to give entry, and the landlord to have the police attend to keep the peace.

The landlord's agent described the smell in the unit as being overwhelming. There is rotten food, garbage and signs of mice and other pests in the rental unit. The tenant does not appear to have cleaned spilled food and drink from the cabinets or the floor. Nor has the tenant cleaned the surfaces in the bathroom. In addition, the tenant unplugged the fridge and permitted excessive water to sit on the bathroom floor so that the subfloor is now rotten.

The landlord's agent stated that upon arriving at work today, she noticed that the government deposited a rent payment on behalf of the tenant for the month of February 2022. The landlord will be issuing a receipt for "use and occupancy only" and will be refunding any portion of the rent remaining after the tenant vacates.

The landlord acknowledged that the tenant likely suffers from mental health issues and she has been actively working with the tenant's support workers and a shelter to support the tenant in vacating the rental unit; however, the landlord has an obligation to protect the property and the interests of their client, the owner of the property. As such, the landlord seeks an Order of Possession effective as soon as possible.

The landlord provided a considerable amount of evidence in this case, including several photographs of the rental unit; inspection reports; and notices of entry.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice. Where there are multiple reasons indicated for ending the tenancy, it is sufficient to end the tenancy where only one reason is proven.

Upon review of the 1 Month Notice, I find I am satisfied that it meets the form and content requirements for a notice to end tenancy and that it was served upon the tenant since the tenant had filed to dispute it.

I turn my mind to whether the landlord had a basis for issuing the 1 Month Notice.

Under section 32 of the Act, a tenant has certain obligations with respect to repairing and maintaining a rental unit, as set out below:

(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

[My emphasis underlined]

Upon review of the photographs and the landlord's testimony, I accept that the tenant has failed to maintain reasonable health, cleanliness, and sanitary standards in the rental unit. I further accept the evidence before me that the lack of cleanliness and sanitary standards has resulted in an offensive odour from the accumulation of garbage and rotting food so much so that other tenants have complained to the landlord.

As provided under section 28 of the Act, a landlord has a duty to protect the quiet enjoyment of all of its tenants and that includes freedom from unreasonable disturbance. As provided under Residential Tenancy Policy Guideline 6, where a tenant is being unreasonably disturbed by the actions or neglect of another tenant, the landlord is expected to take action to rectify the issue, which may include ending the tenancy for the offending tenant. In this case, I accept that the overwhelming smell of garbage and rotting food is unreasonably disturbing other tenants and the landlord has attempted to rectify the issue with the tenant as evidence by its regular inspections and communications with the tenant concerning the condition of the rental unit and the issue has not been resolved.

Further, the landlord provided evidence that there are mice and other pests in the rental unit and I accept that the pests are attracted to the rotting food and garbage accumulated in the rental unit which I accept is putting the landlord's property and the landlord's lawful rights at risk.

Finally, I see that the floor in the bathroom is rotten and I accept the unopposed evidence before me that this is the result of the tenant's neglect in allowing water or moisture to sit on the bathroom floor.

Given all of the above, I find the landlord had a basis to conclude the tenant's actions or neglect has unreasonably disturbed its other tenants, caused extensive damage to the rental unit that has not been repaired, and has put the landlord's property and lawful interests at risk. Therefore, I find the issuance of the 1 Month Notice was with merit and I uphold the notice.

Section 55(1) of the Act provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have found the 1 Month Notice meets the form and content requirements of section 52 of the Act and I have upheld the 1 Month Notice. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

I grant the landlord's request for an Order of Possession as soon as possible and I provide one to the landlord effective two (2) days after service.

Conclusion

The 1 Month Notice is upheld and I provide the landlord with an Order of Possession effective two (2) days after service.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 01, 2022

Residential Tenancy Branch