



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNC LRE

Introduction

This hearing dealt with a Review Hearing of the tenant's original Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated August 18, 2021 (1 Month Notice) and for an order to suspend or set conditions on the landlord's right to enter the rental unit.

On December 24, 2021, an arbitrator issued a decision granting the landlord an order of possession. The tenant did not attend the hearing and applied for a Review Consideration of the December 24, 2021 decision and order, citing that they were unable to attend the hearing due to health issues.

On January 7, 2022 a different arbitrator suspended the December 24, 2021 decision and orders pending the outcome of this Review Hearing held on this date, February 17, 2022.

The landlord SP (landlord), a support person for the landlord, JP (support) and the tenant, SC (tenant) attended the Review Hearing. During the hearing the parties were affirmed, the Review Hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

As neither party raised any concerns regarding the service of documentary evidence, I am satisfied that the parties were sufficiently served under the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant does not have an email address, the decision will be sent via regular mail to the tenant.

Issues to be Decided

1. Should the original decision be confirmed, varied or set aside under the Act?

Background and Evidence

There is no written tenancy agreement between the parties. The parties agreed that the tenancy began nine years ago. The parties agreed that monthly rent is \$1,200.00 per month and is due on the first day of each month.

There was no dispute that the tenant was served with the 1 Month Notice dated August 18, 2021 and filed the next day to dispute the 1 Month Notice.

Neither party submitted a copy of the 1 Month Notice. The parties agreed that the 1 Month Notice listed the following 3 causes:

- ☐ 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

The tenant did not have a copy of the 1 Month Notice during the hearing so in the interests of fairness, I permitted the landlord to read the Details of Cause(s) from the 1 Month Notice.

In summary, the landlord alleges the following:

- The tenant and her son interfered with every showing and hindered or sabotaged the sale of the property on a number of occasions.
- On June 19, 2021 the tenant's son was angry and swearing and yelled "get the fuck of the property" to a prospective purchaser who was viewing the property.
- The tenant's son had harsh facial expressions and was spitting.
- On August 8, 2021, during a showing the tenant and her son again refused to leave the rental unit although they were given proper notice of the showing and the tenant said the home was rotten, has serious issues and not worth buying.
- The tenant told the realtor to stop showing the house.

The landlord testified that during a showing the tenant and her son refused access to the bedroom. The tenant stated that the reason that access was refused as her son did not want their cat to escape.

The tenant was cautioned three times during the hearing for interrupting the landlord and the arbitrator and was advised that any further interruptions would lead to the tenant being muted for the remainder of the hearing.

The tenant was muttering under her breath, "the house is rotten" and then denied saying that to anyone viewing the home. The tenant stated that her son is mentally challenged and that although he is 41 years of age, he acts like a 9-year-old boy.

The landlord presented a letter from their realtor dated August 16, 2021 (Realtor Letter) which supports all of the testimony of the landlord and that the tenant and their son interfered with showing on several occasions. The worst incident was on June 19, 2021 when the tenant's son came out swearing and telling them to go away.

The landlord testified that rent for February 2022 has not been paid by the tenant.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find the tenant disputed the 1 Month Notice the day after it was served and as a result, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid.

After reviewing the Realtor Letter and considering the behaviour of the tenant during the hearing which was argumentative and non-compliant with my direction to stop interrupting, I find the landlord has met the burden of proof and I find the 1 Month Notice is valid. I find the tenant and their son significantly interfered with or unreasonably disturbed the landlord by interfering with the sale of their home and that such behaviour during the showings was unreasonable. As a result, I dismiss the tenant's application to cancel the 1 Month Notice and I uphold the 1 Month Notice.

As the effective vacancy date listed on the 1 Month Notice was September 30, 2021 I find the tenancy ended on that date. I also find that the tenant has been overholding the rental unit since that date. I find the landlord has not reinstated the tenancy and given that the tenant has not paid any money for use and occupancy of the rental unit for February 2022, I grant the landlord an order of possession effective two (2) days from service on the tenant.

Pursuant to section 82(3) of the Act, **I set aside** the original decision and order of possession dated December 24, 2021, and this decision and order of possession are issued in place of the December 24, 2021 decision.

Conclusion

The original decision and order of possession dated December 24, 2021 are set aside.

This decision and the order of possession are issued in place of the December 24, 2021 decision. The tenancy ended on September 30, 2021.

The landlord is granted an order of possession effective two (2) days from service on the tenant. This order must be served on the tenant by the landlord and then may be filed in the Supreme Court of British Columbia and enforced as an order of that court. I caution the tenant that they can be held liable for all costs related to enforcement of the order of possession.

The decision will be emailed to the landlord and sent by regular mail to the tenant. The order of possession will be emailed to the landlord only for service on the tenant as required.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 17, 2022

Residential Tenancy Branch