



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. A repair Order for the unit. Contacted the Landlord in writing to make repairs, but they have not been completed pursuant to Section 32 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, HN, and Support, AN, and the Tenant, MA, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on October 29, 2021 to a resident adult member of the Tenant's family. The Tenant confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenant on October 29, 2021 pursuant to Section 88(e) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on November 18, 2021 (the

“NoDRP package”). MA referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package for this hearing five days after mailing them, on November 23, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

At the outset of the hearing the Landlord confirmed that all the repairs were completed in the rental unit by November 30, 2021. The Tenant gave evidence that since the holes were filled below his sink, he has not seen rodent activity in his kitchen. The Tenant did not provide further verbal evidence that repairs were still needed. I find that the requested repairs as noted in the parties’ text messages and the Landlord’s letter of explanation have been completed and are no longer needed, and accordingly are dismissed from the Tenant’s claims without leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s One Month Notice?
2. If the Tenant is unsuccessful in his claims, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on February 18, 2017. The fixed term ended on February 18, 2019 and then continued on a month-to-month basis. Monthly rent is \$1,891.13 payable on the first day of each month. A security deposit of \$900.00 was collected at the start of the tenancy. The Landlord said they did not collect a pet damage deposit; however, the Tenant said he paid a \$300.00 deposit when his daughter got a cat, and then he paid a second \$300.00 deposit when his son got a dog. The Tenant did not provide receipts for the pet damage deposit, and

the Landlord does not remember collecting a deposit for the pets. The Landlord confirmed that he still holds the Tenant's security deposit in trust.

The reasons on the One Month Notice for ending this tenancy are:

- the tenant or a person permitted on the residential property by the tenant has:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

Further details on the One Month Notice state:

Last May of 2021 we gave a written warning to have the dogs removed and to clean up the house and yard, but again its been ignored. We had given him a month notice at that time but he had made no attempts from his side to fix the situation. We have now received a [City] violation notice from Bylaws. Neighbors are complaining about the dogs. Since this is now a City violation, the dogs need to be removed immediately. They will charge a daily fine up to \$2000 a day. That cost will be on the tenants.

This is the notice I gave them in [May 20, 2021]:

To [Tenant]

After numerous discussions with you about your dogs and the mess in the garage and yard, you have given me no choice but to give you a written warning. You have ignored me and this situation for about 2 years now. The problem has escalated and the situation has gotten worse. I am giving you till May 30th to please clean up the yard and garage and remove the birds and dogs from the property. The mess and smell in the garage have caused rats

and mice to come in the house. The dogs are so aggressive and loud and due to them, our other tenants keep leaving. This has to stop now. The yard is not maintained, and the dogs have dug up the entire back yard. This has also contributed to the rats and mice. The tenants in the basement suite at the back have complained about the noise, smell and mess left by your dogs. They have severe asthma and it has now become a health issue for other tenants. Upon their request, we hired pest control to clean up the basement. The price included the whole house however, you refused them entry upstairs. You have now indicated that rats/mice are upstairs. This will be done at your cost. I don't think it is fair for you to ask me to pay again when I had asked you multiple times to let them upstairs. The pest control company was supposed to provide a 6 month warranty but they are unable to provide this as their instructions and recommendations were not followed. Due to excess bird food and dog food in the garage, the rats will keep coming. This house is not for 2 big dogs. Our initial agreement did not include any pets. You brought one without our permission. We have allowed him to stay after the fact. Then you brought a second dog and now birds without our knowledge. The excess dog food and bird food in the garage has allowed rats/mice to come in. You have destroyed the yard in the back. You have made no attempts to fix this situation. We have talked to you about this on many occasions for the past 2 years but we have been ignored. I can't sit back and watch you destroy my home. If the pets are not removed and the garage and yard are not cleaned up by May 30th, 2021, we will serve you a one month's notice to leave the house.

[Landlord]

After numerous discussions with you about your dogs and the mess in the garage and yard, you still haven't rectified anything.

The effective date on the One Month Notice was November 30, 2021, but the Landlord wrote the Tenant that they will extend the effective date to January 31, 2021. In the hearing the Landlord corrected this date to January 31, 2022. The Landlord's evidence in the hearing was consistent with the causes written in his One Month Notice. The Landlord testified that his house is a mess, the Tenant is not cleaning it up and they want the pets gone. The Landlord stated that the Tenant keeps his dogs in the garage which shares a wall with his other tenants. The pest control company assessed the situation and made recommendations that the dogs' and birds' food need to be moved

or its accessibility restricted. The pest control company provided an undated letter stating:

On March 9th, we had provided a rodent treatment at the property mentioned above. Since the instruction of "putting all the food inside closed containers" was not followed, the rodent infestation had not gone away. When rodent have other food sources available to them, they do not consume the poison in our bait stations. Until this is followed along with closing up the holes we had pointed out in our first visit, the infestation will not be eliminated. The warranty will also not cover the property until these instructions have been followed.

The Landlord provided documentary evidence that another pest control company came onto the property and did an inspection on January 17, 2022. They found mice droppings throughout the home. They placed bait stations and closed up holes and small gaps using steel wool. This pest control company also recommends "*having pets and any food source out of the garage as they are an attraction for rodents.*" The Tenant has not followed through on these recommendations. The Landlord said by not following the pest control company's recommendations, the rodents will keep coming.

The Landlord testified that the other tenants in the home cannot sleep with the dogs' constant barking, and the smell is offensive. One of the other tenants has severe allergies, so now she is avoiding her bedroom which shares the wall with the garage. The Landlord states this is having a negative impact on that tenant's health and that this disruption is having a negative impact on her ability to work. Two other tenants have vacated the rental unit because of the dog situation.

The Tenant installed fencing to keep the dogs out of certain areas of the yard, but the dogs' occupation in the backyard has turned the grass and soil area all to mud.

The Landlord stated the rodent situation is on-going, despite having the pest control company come in. The pest control company said not to repair all the holes in the walls to the outside as the rodents need access to get out of the home, otherwise they will die in the walls and will cause bad odours. The Landlord testified that the Tenant said he would pay for half the invoice for the pest control company, but the Tenant has not done this. The Landlord has given the Tenant many verbal notices and two written notices, but the Tenant has not changed his habits, so the rodent problem continues.

The Landlord uploaded a letter from their downstairs tenant dated January 3, 2022. The contents correspond with the Landlord's evidence.

The Landlord uploaded a letter from the [City] By-Law and Licensing Section dated October 22, 2021. It confirms that the City has received concerns that a barking dog from the Landlord's property is creating a disturbance in the neighbourhood. The Bylaw Enforcement Officer copied the section of the breached bylaw in the letter to the Landlord, it follows:

By-law Provisions – Animal Noise

1.B(4) No person shall own, keep or harbour any animal or bird which by its cries unduly disturbs the peace, quiet, rest or tranquillity of the surrounding neighbourhood or the public at large.

The Landlord confirmed that the Bylaw officer has not imposed a fine as of yet, but it is still a possibility. The Tenant stated that the Bylaw officer only issued a warning.

The Tenant testified that the Landlord is not willing to do the needed repairs in the home. He states the mice problem started in the basement and backyard, and the mice are entering the house through cracks in the drywall. He says, '*the mice come into the house if there are holes*'. The Tenant said there is no evidence of rodents upstairs in the home.

The Tenant affirmed that the pet food is in closed metal containers, and it has been this way before he received the One Month Notice. The Tenant stated there are no rodents in his kitchen especially after the holes were closed up under the sink.

The Tenant said his dogs are Great Pyrenees and need access to the outdoors. He initially was keeping them in an outside shed, but the younger dog was frightened by noises and began barking. He said, one neighbour complained to the city so he had to have a discussion with the bylaw officer. Now he keeps the dogs in the garage of the home to provide comfort to the younger dog.

The Tenant stated he put up the fences because the Landlord said the Tenant needed to keep a distance between the dogs and the tenants in the basement unit. The Tenant offered that he could fix the fences in March or April, or if the Landlord does not like them, he can take them down.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The relevant part of the legislation for this matter is Section 47 of the Act. It states:

Landlord's notice: cause

- 47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

- (d) *the tenant or a person permitted on the residential property by the tenant has*

- (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) *put the landlord's property at significant risk;*

...

- (f) *the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*

- (g) *the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;*

...

- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord served the One Month Notice on October 29, 2021. The Tenant applied for dispute resolution on November 8, 2021 which is within the 10 days after the date of receipt of the One Month Notice. I find that the One Month Notice complies in form and content with Section 52 of the Act.

Section 32 of the Act sets out the obligations of landlords and tenants to repair and maintain rental units. Section 32(1) of the Act states a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. While Section 32(2) of the Act specifies that tenants must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. (emphasis mine)

The Landlord testified to longstanding issues with the Tenant's dogs and the rodent problem in the residential property. Part of the reason why the mice have not gone away is due to the availability of food from the Tenant's dogs and birds which he both keeps in the garage. The Tenant claimed that the pet food is in closed metal containers in the garage, and it has been this way before he received the One Month Notice. I note from the second pest control company's notes in their invoice that they recommended having pets and any food source out of the garage as they are an attraction for rodents. I also appreciate this was submitted after service of the One Month Notice, but I point it out as it notes that food sources are still available in the garage, and this is the biggest temptation for the mice problem.

The Landlord provided a letter from the City By-Law office, and has been warned about the dogs' barking on his residential property. The noise from these dogs has disturbed other occupants in the property, but also neighbours. The Tenant testified that the By-Law Officer has only issued a warning; however, this is sufficient and I find that the Tenant's dogs have caused a significant interference for another occupant on the residential property as well as the Landlord.

I find that the Tenant has not done his due diligence in regard to Section 32(2) of the Act and has not maintained cleanliness and sanitary standards by leaving these food sources exposed for the rodents. I also find that by leaving these food sources out, this has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property.

The Tenant's dogs have created a situation where the odour, and messes left by the dogs have negatively impacted the downstairs tenant's health in the residential property. At least one tenant in the basement unit suffers from asthma and the dogs have had a negative impact on their health. The Landlord also testified that he has lost at least two other tenants because of the Tenant's dogs. I find these circumstances have seriously jeopardized another occupant's health and the Landlord's rental business which is his lawful right or interest. Based on the testimony of both parties, I find on a balance of probabilities that the Landlord has proven cause to end this tenancy in this matter. I dismiss the Tenant's application in its entirety without leave to re-apply.

As the Tenant was unsuccessful in his application, I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

Order of possession for the landlord

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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.*

I previously found that the One Month Notice complies with Section 52 of the Act. I uphold the Landlord's One Month Notice and grant an Order of Possession to the Landlord pursuant to Section 55(1) which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

The Tenant's application is dismissed in its entirety without leave to re-apply.

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

Dated: February 17, 2022

Residential Tenancy Branch