



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, LRE, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- an order for cancellation of a One Month Notice for Cause dated December 1, 2021, pursuant to section 49;
- a monetary order for compensation from the Landlord for monetary loss or other money owed pursuant to section 67;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the Tenants' filing fee for this application from the Landlord pursuant to section 72.

The Landlord, the Landlord's interpreter ("CW") and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and his evidence ("NDRP Package") on the Landlord in-person on December 15, 2021. The Landlord acknowledged receipt of NDRP Package. I find the Landlord was served with the NDRP Package pursuant to sections 88 and 89 of the Act.

Preliminary Matter – Service of Landlord's Evidence on Tenant

The Landlord acknowledged that, although she filed her evidence with the Residential Tenancy Branch ("RTB"), she did not serve her evidence on the Tenant. Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

The Landlord did not serve her evidence on the Tenant at least seven days before the hearing. As the Landlord did not comply with Rule 3.15. I find that the Landlord's evidence is not admissible for this proceeding.

Preliminary Matter – Severance and Dismissal of Tenant's Claims

The Tenant's application includes claims for: (i) a monetary order for compensation from the Landlord for monetary loss or other money owed and; (ii) an order suspending or setting conditions on the Landlord's right to enter the rental unit. Rule 2.3 of the RoP states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issues in the Tenant's application were whether the tenancy would continue or end based on the 1 Month Notice and his claim for authorization to recover his filing fee for this application. The

Tenant's claims for a monetary order for compensation from the Landlord and for an order suspending or setting conditions on the Landlord's right to enter the rental unit under section 70 of the Act are not sufficiently related to the primary issue of whether the 10 Day Notice is upheld or set aside. Based on the above, I dismiss the Tenant's claim from monetary compensation from the Landlord with leave to reapply. If I find the 1 Month Notice is cancelled, then I will dismiss the Tenant's claim for an order suspending or setting conditions on the Landlord's right to enter the rental unit will be dismissed with leave to reapply. If the tenancy ends, the Tenant's claim for an order suspending or setting conditions on the Landlord's right to enter the rental unit will be dismissed without leave to reapply as the tenancy is over.

Issues to be Decided

Is the Tenant entitled to:

- cancellation of the 1 Month Notice?
- reimbursement of the Tenant's filing fee for this application from the Landlord?
- if the 1 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

Rule 6.6 of the RoP provides that, when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and he is the Applicant, the Landlord presents her testimony first.

The parties agreed the tenancy commenced on September 1, 2021, on a month-to-month basis, with rent of \$600.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$300.00 September 1, 2021. The Landlord acknowledged the Tenant paid the security deposit and that she is holding it in trust for the Tenant.

The Landlord testified the 1 Month Notice was served on the Tenant's door on December 1, 2021. The Landlord did not provide any proof of service on the 1 Month Notice on the Tenant's door. The Tenant stated the 1 Month Notice was placed on his door on December 7, 2021.

The 1 Month Notice stated the cause for ending the tenancy was the Tenant or a person permitted on the property by the Tenant has:

- 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; and
- put the landlord's property at significant risk.

The 1 Month Notice provided the following details regarding the causes indicated for ending the tenancy:

TENANT HAS BEEN LATE WITH RENT A COUPLE MONTHS IN A ROW [SIC] AND CHANGED THE LOCK TO THE ROOM WITHOUT THE LANDLORD/LANDLADY'S APPROVAL. THUS A ONE-MONTH NOTICE IS SERVED.

The Landlord stated the Tenant paid the rent on October 2 and November 3, 2021, and as a result, the Tenant was repeatedly late paying the rent. The Landlord stated that it was noticed that the appearance of the lock to the Tenant's door had changed. The Landlord stated she asked the Tenant if he had changed the lock and he admitted to doing so. The Landlord stated she never gave the Tenant permission to change the lock and the Tenant did not provide her with a key for the new lock. The Landlord submitted that the tenancy agreement prohibited the Tenant from changing the lock to his rental unit and, as a result, the Tenant had breached a material term of the tenancy agreement. The Landlord stated that she and her husband never enter a tenant's room without obtaining their permission. The Landlord stated that her husband could not have entered the Tenant's room as he has been in the hospital for two weeks starting on November 28, 2021.

The Tenant admitted he changed the lock to his room as he believed people had entered his room without his permission or proper written notice. The Tenant admitted that he did not apply for and receive an order from the director of the RTB to change the

lock. The Tenant stated he was constantly harassed by the Landlord. The Tenant stated he intended to move out of the rental unit in the near future.

Analysis

Subsections 47(1)(b) 47(1)(d) and 47(2) through 47(5) of the Act state:

- 47(1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
- [...]
- (b) the tenant is repeatedly late paying rent;
- [...]
- (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;
- [...]
- (2) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (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.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

The Landlord testified she served the 1 Month Notice on the Tenant's door on December 1, 2021. The Tenant stated the 1 Month Notice was posted on his door on December 7, 2021. It is unnecessary for me to make a finding on whether the 1 Month Notice was posted on the Tenant's door on December 1, or December 2021. Assuming the 1 Month Notice was served on the Tenant's door on December 1, 2021, then pursuant to section 90 of the Act, the Tenant was deemed to have received the 1 Month Notice on December 4, 2021. Pursuant to section 47(4) of the Act, the Tenant had until December 14, 2021, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Tenant made his application on December 10, 2021. Accordingly, the Tenant made his application to dispute the 1 Month Notice within the 10-day dispute period required by section 47(4) of the Act.

On the other hand, assuming the 1 Month Notice was served on the Tenant's door on December 7, 2021, then pursuant to section 90 of the Act, the Tenant was deemed to have received the 1 Month Notice on December 10, 2021. Pursuant to section 47(4) of the Act, the Tenant had until December 20, 2021, to make an application for dispute resolution to dispute the 1 Month Notice. As noted above, the records of the RTB Tenancy Branch disclose the Tenant made his application on December 10, 2021. Accordingly, regardless of whether the 1 Month Notice was served by the Landlord on the Tenant's door on December 1 or December 7, 2021, the Tenant made his application within the 5-day dispute period required by section 47(4) of the Act.

The Landlord testified the Tenant was regularly late paying the rent and she submitted this was cause for ending the tenancy. Although the Landlord did not check off the box on the 1 Month Notice to indicate that "the tenant is repeatedly late paying rent", I will nevertheless consider her submission that the tenancy should be ended on the basis that the Tenant was repeatedly late paying the rent. *Residential Tenancy Policy Guideline 38* ("PG 38") states in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

The Landlord testified the Tenant had been late paying the rent on October 2, and November 3, 2021. The Tenant was not late paying the rent on at least three occasions as required by PG 38. Based on the above, I do not accept the Landlord's submission

that the tenancy should be ended on the basis the Tenant has been repeatedly late paying the rent pursuant to section 47(1)(b) of the Act.

The Landlord submitted that, by changing the lock to his rental unit, he had breached a material term of the tenancy agreement. Although the Landlord did not check off on the 1 Month Notice that the Tenant had breached a material term of the tenancy agreement, I will nevertheless consider the Landlord's submission that the tenancy should be ended on the basis the tenancy should be ended on the basis the Tenant has breached a material term of the tenancy agreement. The Landlord admitted she did not give the Tenant written notice to correct the situation within a reasonable period of time as required by section 47(1)(h) of the Act. Based on the above, I do not accept the Landlord's submission that the tenancy should be ended on the basis the Tenant is in breach of a material term of the tenancy agreement pursuant to section 47(1)(h) of the Act.

The causes checked off by the Landlord in the 1 Month Notice for ending the tenancy correspond with sections 47(1)(d)(i), 47(1)(d)(ii) or 47(1)(d)(iii) of the Act. Section 32(3) of the Act states:

- (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

The Tenant admitted to changing the lock to his rental unit without the consent of the Landlord and that he did not obtain an order of the director of the RTB to change the lock. However, the Landlord did not provide any testimony or submit any evidence that would establish that, by merely changing the lock to his rental unit, the Tenant had:

- *significantly* interfered with or *unreasonably* disturbed another occupant or the landlord (section 47(1)(d)(i)), or
- *seriously* jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant (section 47(1)(d)(iii)); or
- put the Landlord's property at *significant risk* (section 47(1)(d)(iii))

[emphasis in italics added]

I find the Landlord has not provided sufficient evidence to prove, on a balance of probabilities, that there is cause for ending the tenancy pursuant to subsections

47(1)(d)(i), 47(1)(d)(ii) or 47(1)(d)(iii) of the Act. Based on the above, I cancel the 1 Month Notice and the tenancy continues until ended in accordance with the Act.

As the 1 Month Notice has been cancelled and the tenancy continues, I dismiss the Tenant's claim, with leave to reapply, to apply for an order suspending or setting conditions on the Landlord's right to access the rental unit.

If the Tenant intends to continue residing in the rental unit, he has the option of providing the Landlord with a key to his rental unit immediately and then making an application for dispute resolution to seek an order permitting him to change the locks to the rental unit pursuant to section 31 of the Act.

As the Tenant has been successful in this application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. As the Tenant stated he is moving out of the rental unit in the near future, I grant him a Monetary Order requiring the Landlord to pay him \$100.00.

Conclusion

The 1 Month Notice is cancelled and of no force or effect.

The Tenant is granted a Monetary Order requiring the Landlord pay him \$100.00 to reimburse him for his filing fee for the application.

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: March 3, 2022

Residential Tenancy Branch