



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 18, 2022 ("One Month Notice"); for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlords, K.S. and C.S., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. The Landlord's son, D.S., also attended the hearing and was available to give affirmed testimony, but he did not do so.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlords confirmed that they were both served with the Tenant's Notice of Hearing, Application, and evidentiary submissions. However, the Landlords said that they did not serve the Tenant with the evidence they submitted to the RTB. As such, I advised the Parties that it would be administratively unfair of me to consider the Landlords' evidence, since the Tenant had not had the opportunity to review it before the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I found that the other claim on the Application is not sufficiently related to this to be determined during this proceeding. I, therefore, only considered the Tenant's request to set aside the One Month Notice and his claim for recovery of the \$100.00 Application filing fee at this proceeding. Therefore, the Tenant's other claim is dismissed, with leave to re-apply.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Rule 6.6 states that 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. In most circumstances this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof in this matter is on the Landlords to prove the validity of the One Month Notice on a balance of probabilities.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Are the Landlords entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 5, 2019, with a monthly rent of \$1,200.00, due on the first day of each month. The Parties agreed that the Tenant was required to pay the Landlords a security deposit of \$600.00, and no pet

damage deposit; however, they agreed that the Tenant has not paid the security deposit to the Landlords.

The One Month Notice was signed and dated January 18, 2022, it has the rental unit address, it was served by being posted to the rental unit door on January 20, 2022, with an effective vacancy date of February 28, 2022. The One Month Notice was served on the grounds that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In the hearing, when I asked the Landlord why they had served the Tenant with the One Month Notice, they said:

Actually, I'm very afraid of this Tenant. This is not the first occurrence where he verbally assaulted me. He said: 'You don't know who you're dealing with.... Watch your back', and 'I'm going to get you.': He was swearing and very aggressive.

The Landlord said this incident occurred on January 5, 2022. The Landlord continued:

There were numerous times when he was standing at the doorway and calling me out and said he was going to beat me up . My wife got very scared. We had some swearing going on back and forth. My wife is a nervous wreck and she is very upset. We are both handicapped. We can barely walk, And we're afraid of him doing something to me. I just want him out of there and that's all.

When I asked the Tenant for his version of what happened on January 5, 2022, he said:

That's not the way that it happened. I didn't threaten him. I got up at 3:30 in the morning and shovelled that day. I came home from work and noticed that the addition hadn't been shovelled. I was coming back from my shed. The stairs were filled with snow.

I have been told that [C,S,] is not the Landlord, and that I deal with [K.S.], after we had an argument when we reviewed the lease. He was abusive, because I wouldn't sign a lease saying I would shovel off the roof.

I worked for him for a year, since then I'm in bed at 7:30 at night. I said they shovelled off the roof, and when are they going to clean the rest. That's when

[C.S.] got on the phone and yelled. . . I went over to their house to talk to [K.S.]. I was met at the door by Mr. [S.] who was abusive and very aggressive and said that he was going to throw me out on the street. I did get upset, but I didn't threaten him or ever say I was going to beat him up.

He was standing in the doorway yelling. She and I were trying to talk. She said the people who cleaned up the snow had gone to Mexico. I think [K.S.] is a sweet woman, and I've never had a problem with [C.S.] until this. I wish this had never happened. She asked me to leave, so I went home, and I cleaned up all the snow. Two days later I got a call from the RCMP. They said they had no grounds for charges, but they told me to stay away from [C.S.], and to call them if he contacts me.

He has an assault charge against me and a restraining order? This is false, there are no assault charges or restraining orders. This is a small town and I'm hearing that I did things that are not true. [C.S.] has been a bully to me the entire time I was working for him, that's why I quit working for him.

The Landlord, K.S. testified, saying:

I have to say that I am afraid of the Tenant. The RCMP said to keep our doors shut. We have the officer's phone number. You could call him for information.

His claims of our aggressive behaviour were false. This is untrue. I was there, I was scared. We confirmed this with the RCMP. We are handicapped. The Tenant did say 'You don't know who you're dealing with'. He was very aggressive. I got very, very scared. He did say to [C.S.], 'Come out you 80-year-old man; I'm going to beat you up. You don't know who you're dealing with.'

[C.S.] goes to the shop in our garage. It is on the property. The shop is very close to the Tenant's residence, and is far from our home. We don't know if he will assault [C.S.].

I asked K.S. if there had been any physical contact from the Tenant, and she said:

I don't know of any physical contact, just aggressiveness. It really upsets me. I'm just scared; I get emotional - very disturbed. I would like [the Tenant] to find a new home - to leave.

The Tenant said:

I have no interest in moving elsewhere. I've lived there for 2½ years. I've never threatened them. There's three of them against me. I just want to pay my rent and be left alone. I've never had a problem with anyone in their family. I quit working for him, because [C.S.] threw a shovel and it hit me in the back, and I quit.

I don't threaten people; I keep to myself. I keep their house absolutely beautiful. I go to work at 5 in the morning. I go to bed at 6:00. The RCMP told me the same thing – 'stay away, don't contact him', and he said he would also say that to you.

I've had three arguments with [C.S.] and every argument was about snow removal from the roof. [K.S.] told me when we were signing the lease, everything was good until I said I wouldn't shovel the roof. I'm 50 years old. I'm not climbing up there. Every time we have an argument about snow, he threatens to serve me with a One Month Notice. I keep to myself.

The Landlord said:

He is absolutely lying. I never did throw a shovel at any person in my life. He is completely lying. I have people that work for me. If it goes to court, I will have Freddy tell the court ... I never did throw the shovel.

I asked the Landlords if there were any other incidents involving the Tenant. They said that two or three times "...he told me to watch my back – I'm going to get you."

The Tenant said:

Previously, [K.S.] asked him to leave my house after he was abusive, because he wouldn't let me talk. I never disliked [C.S.]; I dislike what is happening here. To kick me out – half of my summer stuff is under two and a half feet of snow – buried in the yard.

The tenancy agreement has an addendum that lists the Tenant's responsibilities for yard work to include removing the snow from the roof. However, in the spot for initials, in addition to initials, is the word "NO". This is consistent with the Tenant's testimony that the Parties had argued over this clause, and that the Tenant did not agree to it.

Analysis

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

Section 47 of the Act allows the landlord to end a tenancy for 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;

. . .

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenant threatened him during an argument. The Tenant said that the Landlord threatened him with eviction. There are two sides to every story. I infer that both Parties are argumentative, and that the real issue is a disagreement over who is responsible for snow removal.

Policy Guideline #1 (“PG #1”) states: “This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property.” Under the heading: “Property Maintenance” it states:

3. Generally, the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and **clearing snow**. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
[emphasis added]

However, I infer that the Landlord and Tenant reside on the same property, and that it has different residences. As such, clause 6 is more fitting:

6. The landlord is responsible for cutting grass, **shovelling snow** and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.
[emphasis added]

When I consider all the evidence before me overall, I find that the Landlords have not provided sufficient evidence to meet their burden of proof on a balance of probabilities, to support the validity of the One Month Notice. I find that the Parties have personality conflicts that leads to arguments; however, this is not grounds for ending a tenancy in the very tight housing market in British Columbia.

I encourage the Parties to seek mediation to resolve the snow removal issue. I find that the information in the Addendum to the tenancy agreement is not clear as to the Parties’ ultimate agreement on this matter. However, when I turn to PG #1 above, I note that it is a landlord’s responsibility to have the snow removed from a residential property with separate residences.

Based on the evidence before me overall in this matter, I find that the Tenant is successful in his Application to cancel the One Month Notice, as the Landlords’ failed to provide sufficient evidence to warrant cancelling the tenancy on the grounds listed. The One Month Notice is cancelled and is of no force or effect, pursuant to section 62 of the Act. The tenancy continues until ended in accordance with the Act.

The Tenant’s claim for an Order for the Landlord to Comply with the Act or tenancy agreement is dismissed with leave to reapply.

Given the Tenant's success in this proceeding, I also award him recovery of the **\$100.00** Application filing fee from the Landlords, pursuant to section 72 of the Act. The Tenant is **authorized to deduct \$100.00** from one upcoming rent payment in complete satisfaction of this award.

Conclusion

The Tenant is successful in his Application to cancel the One Month Notice. I cancel the One Month Notice and find that it is void and unenforceable, as the Landlords failed to provide sufficient evidence of grounds for the eviction. The One Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act.

The Tenant is awarded recovery of the \$100.00 Application filing fee from the Landlords. The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction of this award.

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: March 02, 2022

Residential Tenancy Branch