



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 26, 2021. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated October 23, 2021 (the One Month Notice); and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing and provided affirmed testimony.

At the beginning of the hearing, the Tenant testified that the Notice of Dispute Resolution Hearing was not served on the Landlord. The Tenant also confirmed she was not relying on any documentary evidence and that none had been served on the Landlord.

The Landlord confirmed she received notification of the hearing and the information to enable her to participate after she contacted the Residential Tenancy Branch.

The Landlord further testified she served the responsive evidence on the Tenant in person on January 5, 2022. The Tenant acknowledged receipt but testified that it was left at the front door.

No further issues were raised with respect to service or receipt of these packages during the hearing. Despite the lack of service of the Notice of Dispute Resolution Proceeding on the Landlord, the parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. If not, is the Landlord entitled to an order of possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Landlord and the Tenant agreed the current tenancy began on May 1, 2019, at which time the Landlord purchased the rental unit and assumed the existing tenancy. Rent in the amount of \$1,435.00 per month is currently due on or before the first day of each month. The parties agreed the Tenant paid a security deposit of \$700.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice, a copy of which was submitted into evidence. The Landlord testified the One Month Notice was served on the Tenant by leaving a copy attached to the Tenant's door on October 25, 2021. The Tenant acknowledged receipt of the One Month Notice "within the next couple of days" after it was attached to the door. I note that the Tenant's application was made on October 26, 2021.

The Landlord provided testimony in support of the One Month Notice. The Landlord testified that she received a call from DM on "Thanksgiving Monday" – October 11, 2021 — to advise there had been a break-in at the rental unit.

The Landlord testified that the strata followed up and that a police report was filed. However, the Landlord testified there were no signs of forced entry and provided photographs of the rental unit door in support.

The Landlord testified that it was subsequently discovered that the Tenant's stepbrother, JT, removed three windows from the rental unit while a guest of the Tenant. The windows were later found in the parking garage. Photographs of the glass windows stored in a parking garage were submitted in support.

The Landlord testified that she was advised by the window company and the strata that the missing windows could cause structural issues. Those concerns did not come to fruition and the Landlord confirmed the windows were reinstalled on October 13, 2021.

In reply, the Tenant acknowledged that JT was a guest for two weeks, during which time he removed the windows. The Tenant offered no further explanation. The Tenant testified that she has been willing to reimburse the Landlord for any costs but only recently received documentation.

The Landlord also testified she has experienced "hostile behaviour and racial comments" as a result of the above issues relating to the windows. She stated that on or about October 16, 2021, the Tenant referred to "you people" in a conversation with the Landlord.

In reply, the Tenant acknowledged that she questioned whether family members were doing the work because it seemed that the workers were disorganized. However, she denied referring to "you people" and asserted that nothing she said was racist.

The Landlord testified there have been too many occupants in the rental unit. However, the One Month Notice did not indicate too many occupants in the rental unit as a basis to end the tenancy. It has not been considered further.

The Landlord also testified that the Tenant had been repeatedly late paying rent. However, the One Month Notice did not indicate repeated late payments as a basis to end the tenancy. It has not been considered further.

Analysis

Based on the documentary evidence to which I was referred, and the oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the Act permits a landlord to take steps to end a tenancy for the reasons described therein. Specifically, section 47(4) confirms that a tenant who receives a notice to end tenancy under this section has 10 days to dispute it by making an application for dispute resolution. I find that the One Month Notice was served on the Tenant by leaving a copy attached to the door of the rental unit on October 25, 2021. Although neither party could confirm when the One Month Notice was received by the Tenant, I note the Tenant's application was made on October 26, 2021. I find the Tenant disputed the 10 Day Notice on time, in accordance with section 47(4) of the Act.

The One Month Notice alleges the following reasons for issuing the One Month Notice:

- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, or
 - put the Landlord's property at significant risk;
- the Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has caused or is likely to cause damage to the Landlord's property;
- the Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- the Tenant or a person permitted on the residential property by the Tenant has caused extraordinary damage to a rental unit or residential property.

In this case, the Landlord's undisputed evidence was that the Tenant's stepbrother, JT, removed three exterior windows in the rental unit while a guest of the Tenant. The Tenant offered no explanation other than to suggest she would be willing to pay for any costs incurred.

I find that the removal of the windows by a guest of the Tenant significantly interfered with and unreasonably disturbed the landlord, seriously jeopardized a lawful right or interest of the Landlord and put the Landlord's property at significant risk. Indeed, the Landlord testified she incurred financial losses that have not yet been reimbursed.

Considering the above, I find it is not necessary for me to consider the Landlord's evidence regarding allegations of hostile behaviour and racial comments.

I find that the Landlord's evidence provides a sufficient basis upon which to end the tenancy. Therefore, I order that the Tenant's request for an order cancelling the One Month Notice is dismissed without leave to reapply. As the Tenant has not been successful, I find the Tenant is not entitled to recover the filing fee. This aspect of the Tenant's application is also dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession to the landlord. Having reviewed the One Month Notice, I find it complied with section 52 of the Act. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two days after service on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I grant the Landlord an order of possession, which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 8, 2022

Residential Tenancy Branch