



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) to seek an order cancelling a One Month Notice to End Tenancy for Cause dated January 26, 2022 (“1 Month Notice”) pursuant to section 47 of the Act.

Neither of the two Tenants attended this hearing. I left the teleconference hearing connection open until 2:06 pm in order to enable the Tenants to call into this teleconference hearing scheduled for 1:30 pm. The Landlord and the Landlord’s property manager (“JW”) attended the hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that the Landlord, JW and I were the only ones who had called into this teleconference.

The Landlord acknowledged the NDRP was served on him by registered mail on or about February 13, 2022. I find the NDRP was served on the Landlord by the Tenants in compliance with the provisions of section 89 of the Act. Landlord stated the Tenants did not serve any evidence on him.

The Landlord stated he did not serve any evidence on the Tenants.

Preliminary Matter – Effect of Non-Attendance by Tenants

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”) state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenants did not attend the hearing before it concluded at 2:06 pm, the Application is dismissed without leave to reapply. As the Tenants did not attend the hearing, I will not consider any of their evidence except for the copy of the 1 Month Notice they submitted to the Residential Tenancy Branch with the Application.

Rule 6.6 of the Rules states:

6.6 The standard of proof and onus of proof

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.

Notwithstanding I have dismissed the Application, the Landlord must nevertheless prove the reason he wishes to end the tenancy pursuant to the 1 Month Notice.

Issue to be Decided

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 Application and my findings are set out below.

The Landlord stated the tenancy commenced on November 1, 2018, with a fixed term ending October 31, 2019, and continuing on a month-to-month basis thereafter. The Landlord stated the Tenants are required to pay rent of \$1,950.00 on the 1st day of each month. The Landlord stated the Tenants were required to pay \$975.00 for a security deposit and \$975.00 for a pet damage deposit. The Landlord acknowledged the Tenants paid the deposits and that he is holding them in trust for the Tenants. The Landlord stated the rent is paid up to date.

JW stated the Landlord served the 1 Month Notice on the Tenants by registered mail on January 26, 2022. The Landlord provided the Canada Post tracking number for service of the 1 Month Notice on the Tenants to corroborate his testimony. I find the 1 Month Notice was served on the Tenants in accordance with the provisions of section 88 of the Act.

The 1 Month Notice states the reasons for ending the tenancy were:

1. tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
2. tenant permitted on the property by the tenant has caused extraordinary damage to the unit.

The 1 Month Notice provides the following details of the causes for ending the tenancy:

Did a walk-through inspection to find damage throughout to walls, baseboards, carpet, laminate flooring. Property not in good/reasonable care and will be several thousand dollars to repair at minimum.

JW testified he and the Landlord conducted an inspection of the rental unit on January 25, 2022. JW stated that, upon entry into the foyer, they found the stairs going to the upstairs level damaged with dirt and urine from pets. JW stated there was cracks and scrapes on the walls throughout the rental unit from people or items banging into the walls as well as several small holes in the walls. JW stated that virtually every wall in the rental unit had been damaged. JW stated that there were crayon and felt pen drawings on the lower parts of the walls in various areas of the rental unit, presumably made by a child or children. JW stated the flooring on the main floor was frayed and buckled and there were urine stains. JW stated one of the Tenants admitted that a dog was urinating on the carpet and that that Tenant placed a tarp over the urinated area.

The Landlord stated the rental unit was brand new when the Tenants took possession of it. The Landlord stated the rental unit wreaked of stale urine from a dog and/or cat. The Landlord stated that the Tenants have three children and there were feces on one of the beds. The Landlord stated all of the off-whites carpets in the bedrooms must be replaced because there is heavy grime and urine stains all over them. The Landlord stated there were cat feces on the garage floor. The Landlord stated there were children's toys in the gutters of the exterior of the rental unit that were causing them to overflow when it rains.

JW stated the Landlord had offered the Tenants assistance to clean up the rental unit. JW stated the Tenants sent a text advising him the Tenants wanted to remediate the condition of the rental unit themselves. JW stated that he and the Landlord returned to the rental unit to perform another inspection on February 26, 2022. JW stated he and the Landlord found the Tenants had not done anything to remediate the condition of the rental unit.

Analysis

Sections 47(1) and 47(4) of the Act state in part:

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;*

[...]

- (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.*

[emphasis in italics added]

The undisputed testimony of JW was the Landlord served the 1 Month Notice on the Tenants by registered mail on January 26, 2022. I find the 1 Month Notice was deemed to have been served on the Tenants on January 31, 2022. Pursuant to section 46(5), the Tenants had 10 days after they received the 1 Month Notice, being February 10, 2022, within which to make the Application. The records of the Residential Tenancy Branch disclose the Tenants made the Application on February 3, 2022. As such, the Tenants made the Application within the 10-day dispute period. However, as noted above, the Tenants did not attend this hearing and the Application has been dismissed.

The undisputed testimony of JW and Landlord was that, upon inspection of the rental unit on January 25, 2022, they found:

- cracks and scrapes on the walls through the rental unit
- at least two wholes in the walls
- grime and urine stains on the off-white carpeting
- damage to the laminate floors in the house
- feces on the garage floor.

- crayon and felt pen drawings on the lower parts of the walls in various areas of the rental unit, presumably caused by a child or children.
- flooring on the main floor was frayed and buckled and there were urine stains
- children's toys in the gutters causing them to overflow during rain
- odour of pet urine and feces throughout the rental unit

The undisputed testimony of JW was the Landlord offered the Tenants assistance to clean up the rental unit. The undisputed testimony of JW is that the Tenants were provided with an opportunity to remediate the damages. The undisputed testimony of was that, when he and the Landlord returned to the rental unit to perform another inspection on February 26, 2022, they found the Tenants had not done anything to remediate the condition of the rental unit.

The online version of the Merriam-Webster dictionary defines 'extraordinary' as follows:

- a: going beyond what is usual, regular, or customary
 - extraordinary powers
- b: exceptional to a very marked extent
 - extraordinary beauty
- c: of a financial transaction: nonrecurring

The undisputed evidence of JW and the Landlord establish that the damages to the rental unit go beyond what is usual, regular or customary and, therefore, cannot be considered as general wear and tear which is the responsibility of the Landlord to repair. I find that, when all the damages are considered collectively, they are exceptional to a very marked extent. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, cause for ending the tenancy pursuant to subsection 47(1)(f) of the Act. As I have found cause under subsection 47(1)(f), it is unnecessary for me to consider whether there is cause to end the tenancy under subsection 47(1)(d)(iii) of the Act.

I have reviewed the 1 Month Notice and find that it complies with form and content requirements of section 52 of the Act. As such, I find the 1 Month Notice is valid.

Section 55(1) of the Act states:

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 to the landlord an order of possession of the rental unit if

- (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.

JW stated the Tenants rent has been paid for May 2022. As such, I grant the Landlord an Order of Possession effective at 1:00 pm on May 31, 2022, after the Landlord serves this decision and attached order on the Tenants.

Conclusion

I grant an Order of Possession to the Landlord effective at 1:00 pm on May 31, 2022, after the Landlord serves this decision and attached order on the Tenants.

Should the Tenants fail to comply with this Order, this Order may be filed 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: May 10, 2022

Residential Tenancy Branch