



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DHF REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the Notice); and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both sides were present at the teleconference hearing. The hearing was held on June 10, 2022. All parties provided affirmed testimony and were given a full opportunity to be heard, to present evidence and to make submissions.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence packages, and no issues with service were raised. The Tenant confirmed receipt of the Landlord's main evidence package within the acceptable time frame under the Rules of Procedure (received at least 7 days before the hearing). The Landlord also provided a few updated photos, taken a couple of days before the hearing, to show that the issue that was identified on the Notice is still ongoing. These photos were the same as the photos taken months earlier aside from the fact they were taken more recently. The Tenants confirmed receipt of the photos a day before the hearing. I find the photos are new and relevant evidence, as they were recently taken photos, not available at the time the previous package was served, and they are pertinent to the issue behind the Notice. I find there is little to no prejudice in admitting this "new and relevant" (late evidence), as the Tenants were able to review the photos in advance of the hearing, and were prepared to respond to them. The Tenants did not express that admitting this new and relevant evidence was in any way prejudicial or unfair.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to have the landlord's 1-Month Notice to End Tenancy for Cause cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background and Evidence

In this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether or not there is a sufficient basis to end the tenancy by way of the Notice. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Landlord issued the Notice for the following reasons:

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.*
- *put the Landlord's property at significant risk.*
- *Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property.*
- *Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
- *Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the Landlord.*

- *Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*
- *Tenant has not done required repairs of damage to the unit/site.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Under the “details of cause” section, the Landlord stated the following:

-The Tenants have significantly disturbed and harassed the Landlord's agents and employees.
-The Tenants have failed to clear items that are a fire hazard.
-The Tenants have failed to provide proof of insurance to the Landlord.
-The Tenants have failed to remove items from common areas and entryways.
-The Tenants have not repaired the front lawn.
-Tenants continue to park vehicles in violation of local Bylaws.

During the hearing, the Landlord focused on and prioritized one main issue relating to the rental property. The Landlord focused on the risk posed to the rental property due to the potential cancellation of the Landlord's house insurance due to the Tenant's actions. The Landlord also made reference to a series of escalating and dysfunctional interactions with the Tenants, the municipality, and the insurance company.

More specifically, the Landlord pointed to clause 42 of the tenancy agreement which states the following:

“The tenant will not do, or permit to be done, anything that may void the landlord's insurance covering the residential property or rental unit, or that may cause the landlord's insurance premiums to be increased...”

The Landlord stated that their insurer (agent of) has confirmed that the Tenants' belongings piled up at the front door jeopardize the insurability of the rental property. The Landlord pointed to an email from their insurance company on February 1, 2022, which specifies that the insurer confirmed that the Tenants' items must be removed in order to comply with the insurance requirements. Specifically, the insurer stated as follows:

“The...items stored in the front doorway...provide an inherent fire and liability risk this must be addressed immediately, in order to remain on risk. Photos are below. We will require these items to be removed prior to February 15, 2022

Please ensure all other walkways and doorways are kept clear of clutter accessible to all."

A copy of this email was provided into evidence. Also, a copy of an email, dated April 20, 2022, from the insurer states the following:

"The accumulated items near the front door are concerns (see photos below) for the insurance company. They do show an inherent risk for both fire and liability, we would like to see this removed and/or cleaned and organized as soon as possible. Failure to do so could result in cancellation of the dwelling policy."

The Landlord explained that after they received notification from their insurer that their policy could be in jeopardy due to the Tenants belongings at the front entrance, they notified the Tenants, in writing, that same day. The Landlord provided a copy of this email which lays out the Tenants are in breach of material terms of their contract. These items were as follows:

20. STORAGE: All property of the tenant kept on the residential property must be kept in safe condition in proper storage areas and is at the tenant's risk for loss, theft, or damage from any cause whatsoever. Hazardous or dangerous items must not be brought onto or kept on or in the residential property or rental unit. It is a material term of this Agreement that items stored inside the residential unit must be limited in type and quantity so as not to present a potential fire or health hazard, or to impede access to, egress from normal movement within any area of the rental unit.

25. COMMON AREAS. The tenant must not misuse or damage common areas of the residential property, but must use them prudently and safely and must conform to all notices, rules or regulations posted on or about the residential property concerning the use of common areas, including areas, including restriction of their use to tenants on and restriction on use by children. All such use will be at the sole risk of the tenant or the tenant's guests.

42. LIABILITY AND INSURANCE. The tenant will not do, or permit to be done, anything that may void the landlord's insurance covering the residential property or rental unit, or that may cause the landlord's insurance premiums to be increased. Unless the landlord is in breach of a lawful duty, the tenant releases the landlord from any liability in the connection with the use by the tenant or tenant's guests of the rental unit or the residential property.

The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability. The tenant agrees that the landlord will not be responsible for any loss or damage to the tenants property. The tenant will be responsible for any claim, expense, or damage resulting from the tenant's failure to comply with any term of this Agreement and this responsibility will survive the ending of this agreement.

As part of this written warning, the Landlord informed the Tenants that they had until February 10, 2022, to comply and clean up. The Landlord stated that she was required to report back to the insurance company at that time.

The Landlord noted that the Tenants contacted the Landlord's insurer and told them that the items they had stored at the entryway was, in part, a driftwood art display, and that the fire department had told them it was not a fire risk, without an ignition source.

The Tenants did not submit copies of any report or statements from the Fire Department.

As part of an email from the Landlord's insurer to the Tenants from February 2, 2022, the Landlord's insurer noted that he is a representative of the insurer, and that he is interested in risk management. He also stated that he believes that items stored at the

front entryway would increase risk and contribute to fuel/fire loss, which is a liability and a risk management issue.

The Landlord stated that the Tenants failed to remove the items by February 10, 2022, and they issued a formal "caution notice" to the Tenants, indicating that they have breached a material term of the tenancy agreement by putting the Landlord's insurance at risk due to having so many items stored at the front entrance. The Landlord also noted that the Tenants also failed to obtain their own renter's insurance, which is also a requirement of the tenancy agreement. This formal caution notice echoed what was contained in the written warning from around 10 days prior.

The Landlord explained that on February 11, 2022, they updated their insurer by email (provided into evidence), stating that the Tenant's items stored at the front entryway are still there.

The Landlord stated that the Tenants told them they have their own renter's insurance policy, but the Tenants were being difficult and would not show a copy of the policy.

The Landlord stated that the Tenants failed to take steps to clean up the problematic area at the entryway, despite being given ample time to do so. The Landlords explained that they went back on April 10, 2022 to do another visual inspection and take some photos. The photos show that the items still remained in the front entryway. The Landlord pointed to an email from the insurer on April 20, 2022, where he states the following:

"You are correct now that we have identified an inherent insurance risk with this property, we do ask that you drive by regularly, and inspect every 90 days minimum. Continuous inspections and frequent drive-by's are required.

The accumulated items near the front door are a concern (see photos below) for the insurance company. They do show an inherent risk for both fire and liability, we would like to see this removed and/or cleaned and organized as soon as possible. Failure to do so could result in cancellation of the dwelling policy. If we are to take that action we are obligated to advise the mortgagee listed on the policy as well. Generally insurance is a requirement for lender agreement.

I am asking you to be vigilant in your property management of this property as required.

I will leave this for now and have abeyanced my file for 60 days. I will ask for an update at that time, advise the insurance company and take appropriate action at that time."

The Landlord stated that this clearly shows the Landlord's insurance policy may be cancelled if the issue is not addressed within 60 days. The Landlord stated that this period expires on June 20, 2022, at which point the Landlord's policy may be cancelled due to the manner in which the Tenant's have stored their belongings in and around the front door. The Landlord cited the *Hunt v. Highview Estates Mobile Home Park 2022 BSCS 151* case to support that it is reasonable to end a tenancy, due to breach of a material term, when a tenant failed to adhere to insurance requirements and keep the rental space sufficiently clean. The Landlord also referred me to several similar cases from the RTB where a tenancy was ended due to similar insurance related issues.

The Tenants stated that they have lived in the rental unit for around 4.5 years now and they were always told they had full use of the front side of the yard, plus the side yard. The Tenants stated that they did not have any issues with the Landlord until last August, which is when the Landlord mentioned being able to get more rent for the rental unit the Tenants were residing in. The Tenants stated that since that time, the relationship has slowly degraded, and is now to the point where the police have been called to assist with the disputes.

The Tenants stated that it is the Landlord who has called the insurer and the city bylaw on several occasions, which has directly caused the current issues, particularly the one about the Landlord's insurance policy. The Tenants stated that the fire chief came and did an inspection on February 8, 2022, but they did not have any documentary evidence showing what, if any, formal findings or reports were made about their inspection of the front entryway, and potential fire hazards.

The Tenants assert the Landlord has been harassing them, and intimidating them so that they will move. The Tenants provided a timeline of all the disputes with the Landlord in written document spanning January 28, 2022, to May 1, 2022. The Tenants also provided copies of email exchanges with the Landlord, the municipality, and the insurer to highlight the Landlord's continuous campaign to evict them and to intimidate and harass them with alleged tenancy agreement, bylaw(parking), and insurance requirement violations.

The Landlord also asserted that the Tenants have tried to defame her by going to her employer to make unfair allegations about harassment. The Landlord stated that she is

trying to do her job and follow up diligently, and the Tenants are escalating this, with their threats of police involvement and false allegations to the Landlord's employer.

The Landlord provided a few photos taken a couple of days before the hearing to show that the Tenants have still not removed the items of concern in the front entryway. The Tenants stated they have removed the items but provided no evidence to support this.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord has issued the Notice under more than one ground. However, I first turn to the following ground:

Tenant or a person permitted on the property by the Tenant has:

- *put the Landlord's property at significant risk.*

I note the parties have had a long series of increasingly negative interactions on a wide variety of issues (parking, insurance, bylaw, storage). The Landlord has become increasingly involved in actively managing several issues relating to the tenancy. However, the issue I will first address is the risk posed to the Landlord's insurance policy. More specifically, that the Landlord's insurance policy has a palpable and real risk of being cancelled due to the manner in which the Tenants have stored their belongings in the front entryway area.

I note the Landlord took photos of the rental unit towards the end of January 2022, which were subsequently sent to the Landlord's insurer. The Landlord's insurer sent an email to the Landlord on or around February 1, 2022, stating that the items the Tenants have stored in their entryway "provide an inherent fire and liability risk this must be addressed immediately". The Landlord's insurer required the Landlord to ensure the items were removed before February 15, 2022. Following this email from the insurer on February 1, 2022, the Landlord provided a written warning to the Tenants via email, giving the Tenants until February 10, 2022, to comply with the material terms noted in the letter, and to clean up the debris on the porch.

I note the Landlord attended the rental unit on February 10, 2022, and the debris was still present at the entryway of the rental unit. Subsequently, the Landlord issued a formal "caution notice" to the Tenants, indicating that they have breached a material term of the tenancy agreement by putting the Landlord's insurance at risk due to having so many items stored at the front entrance.

Following this, the Landlord kept the insurer updated, but it does not appear the issue was dealt with or resolved. On or around April 10, 2022, the Landlord went back to check on the status of the issue, and it did not appear anything was resolved. The Landlord heard from their insurer on or around April 20, 2022, who stated the following:

"You are correct now that we have identified an inherent insurance risk with this property, we do ask that you drive by regularly, and inspect every 90 days minimum. Continuous inspections and frequent drive-by's are required.

The accumulated items near the front door are a concern (see photos below) for the insurance company. They do show an inherent risk for both fire and liability, we would like to see this removed and/or cleaned and organized as soon as possible. Failure to do so could result in cancellation of the dwelling policy. If we are to take that action we are obligated to advise the mortgagee listed on the policy as well. Generally insurance is a requirement for lender agreement.

I am asking you to be vigilant in your property management of this property as required.

I will leave this for now and have abeyanced my file for 60 days. I will ask for an update at that time, advise the insurance company and take appropriate action at that time."

I note that, as of June 7, 2022, the items were still not cleared out. I also note the Landlord will have to update their insurer by June 20, 2022. The Tenants stated they cleared the items out and cleaned up but provided no documentary evidence to support this. The email from the insurer is clear in that the items stored in the front entryway are a concern for the insurance company, and they show an "inherent risk" for both fire and liability. I note the Tenants stated the Fire Department came sometime in February and opined that there was no significant fire risk, but there is no written report or documentary evidence detailing what their findings were. The insurer noted explicitly that the items need to be removed and/or cleaned and organized, soon, or else the Landlord's insurance policy could be cancelled. Despite being given many months to

deal with the accumulated items in the front entryway, they still appear to be present, as recently as June 7, 2022. I find the general inaction from the Tenants puts the Landlord's property at significant risk of being uninsured. Overall, I find this poses a significant risk to the Landlord's property and I find there is sufficient evidence to support this ground on the Notice.

Having made this finding, it is not necessary to consider the remaining grounds indicated on the Notice. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The landlord is entitled to an order of possession.

As the tenants were not successful with the application, I dismiss the claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed. Further, I dismiss the tenant's request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: June 14, 2022

Residential Tenancy Branch