Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNE, MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46;
- cancellation of a One Month Notice to End Tenancy for End of employment, pursuant to section 47; and
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67.

Tenant JD (the tenant) and the landlord attended the hearing. The tenant was assisted by advocate GL. The landlord was represented by agents MC (the landlord) and NB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue – Service

The tenant served the notice of hearing in person in March 2022 and the evidence in person on June 09 or 10, 2022. The landlord confirmed he received the notice of hearing and the evidence (the materials) and that he had time to review the materials.

Based on the testimony offered by both parties, I find the tenant served the materials in accordance with section 89(1)(a) of the Act.

The landlord served the response evidence, but did not submit a copy to the Residential Tenancy Branch (RTB).

Rule of Procedure 3.15 states:

> 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.

I excluded the landlord's response evidence, per Rule of Procedure 3.15.

Preliminary Issue – Amendment

Both parties agreed the landlord did not serve a 10 Day Notice to end tenancy for unpaid rent or a one month notice to end tenancy for end of employment and served a one month notice to end tenancy for cause. The application indicates the tenant received a notice to end tenancy on March 03, 2022. Both parties were aware that the tenant disputed the one month notice to end tenancy for cause received on March 03, 2022.

The applications for an order to cancel a 10 Day Notice to end tenancy for unpaid rent or a one month notice to end tenancy for end of employment are moot, as the landlord did not serve these notices.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for the cancellation of a 10 Day Notice to end tenancy for unpaid rent and the cancellation of a one month notice to end tenancy for end of employment.

Based on the application and the testimony offered by both parties, I amend this application to accept the application to cancel the one month notice to end tenancy for cause (the one month Notice), per section 64(3)(c) of the Act.

Preliminary Issue – Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the one month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the one month Notice which will be decided upon.

Issues to be Decided

Is the tenant entitled to an order for the cancellation of the one month Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the accepted evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on April 01, 2017, monthly rent is due on the first day of the month and the landlord collected and holds a security deposit of $485.00. The tenant affirmed that rent is $630.00 and the landlord stated that rent is $640.00.

The parties agreed the landlord served and the tenant received the one month Notice via registered mail on March 03, 2022. The tenant submitted this application on March 04, 2022 and continues to occupy the rental unit.

The one month Notice is in evidence. It is dated February 22, 2022 and the effective date is March 31, 2022. The reason to end the tenancy is "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the rental unit."

The details of the cause are:

> March 22, 2021
> -Tenant caused a flood due to negligence in the early morning hours of 5:45am in her rental unit which caused damaged to unit 1**, the apartment, located below and to the amenity room.
> -Tenant has not paid for the cost of the damage.
> -Although tenant has received Chargeback Letters stating the amount owing for damage, and a reminder letter, tenant has made no attempts to make payments or contact VNHS to set up a payment plan.

The landlord testified that on March 22, 2021 he received an emergency repair call and attended the rental building at 5:15 A.M. The landlord inspected rental unit 1** and noticed it was flooded. The landlord investigated the source of the flooding and attended to the tenant's rental unit immediately. The landlord noticed that it was flooded as well ("the unit had a large pool of water") and the bathroom faucet was running at maximum flow. The landlord shut off the water to stop the flooding.

The landlord said that the tenant or her guest is responsible for the significant flood damage caused to unit 1** and the amenities room of the rental building. The landlord hired a company to do the necessary repairs after the flooding.

The tenant confirmed receipt of the landlord's letter dated April 7, 2021:

> WARNING LETTER
> Irresponsible behaviour
> **Apartment 1** got heavily flooded and the amenity room in the basement has also suffered water damage.** When the undersigned entered your unit at 5.50 AM, the faucet on the bathroom vanity was still running and due to a clogged drain, the sink was overflowing.
> If you carry tenant I home insurance, please inform your insurer as soon as possible, if not already done.
> We must ask you to make sure that occupants and guests show more responsibility and to make sure that such incidents do not happen again.
> (emphasis added)

The tenant affirmed she requested a plumbing repair in 2019 in writing and also verbally. The tenant purchased a snake and unclogging drain liquid, as the landlord did not complete the requested repair. The tenant stated the landlord needed to fix the pipelines and did not do so. The tenant testified she is not responsible for the flood damage and that her faucet only had a drip on March 22, 2021. The tenant said the flood happened, but her rental unit was not damaged.

The landlord affirmed the tenant did not request a plumbing repair. The landlord performs preventive maintenance. The landlord stated the flood was caused by the tenant's negligence, as her rental unit's drain was clogged and the tenant kept the faucet running at maximum flow.

The tenant's application states:

> Disputing amount of bill in regards to liability + proving negligence + who is responsible, if not both myself + landlord due to failure to fix clog in wall/pipe. I drained sink multiple times + purchased snake + also filed repair notice.
> […]
> Accept half responsibility for the $2,021.25 bill for clogged sink + water damage, as the clog was in the wall, based on discussion with plumbers, also requisite sent via mailbox in laundry room in November/December 2020.

I asked the tenant to explain why she accepts "half responsibility for the $2,021.25 bill", as stated in the application. The tenant believes it is fair to pay half of the repair cost.

The landlord testified the tenant paid the amount of $197.40 for the initial plumbing repair referenced in the October 25, 2021 letter:

> On March 22, 2021 the Vancouver Native Housing Society called Urban Plumbing to attend to a clogged washroom sink. They discovered the source of the blockage to be due to a large collection of hair in the drain.
>
> As this is negligence and due to actions on your part, be advised that you are responsible for the cost of the service call. Please submit the payment of $197.40 to our main office or to the Building Office no later than noon on November 5, 2021.

The landlord asked the tenant to pay the December 02, 2021 invoice for the final cost of the plumbing repairs:

> Flood damage unit 1**, source [rental unit]

> **On arrival we noticed large amounts of water pouring through the ceiling light fixtures. The Properly Manager had identified the source water, which was a bathroom faucet in the unit above [rental unit]. Faucet was opened and running on maximum when at the same time the drain was clogged. When we arrived, water was shot off. We opened ceilings drain water, we let dehumidifiers and fans running for one week, controlled and emptied water tanks daily.**
> Water also poured into amenity room.
> Set up fan and dehumidifiers in amenity room where water had also damaged the ceiling and water accumulated on floor. Repaired ceiling and painted. Labour and material.
> Total cost: $2,021.25.
>
> (emphasis added)

The landlord said that other contractors charged a much higher amount for the repair service and the contractor hired offered the lowest estimate.

The tenant confirmed receipt of the landlord's letter dated December 15, 2021:

> Please be advised that the amount of $2,021.25 has been charged back to your rental unit. The charge back is the result of the sink overflow incident which took place in your unit and caused flooding.
>
> Any damages to the property due to the tenant's negligent or carelessness will be charge back to the tenant(s) to recover the cost of the work and/or service done.
>
> Please submit the payment of $2,021.25 to our main office or to the Building Office no later than noon on February 15, 2022.

The landlord served the Notice because the tenant did not pay the December 15, 2021 invoice.

Analysis

The tenant confirmed receipt of the Notice on March 03, 2022 and submitted this application on March 04, 2022. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

I find the landlord's testimony was more convincing and detailed than the tenant's testimony.

As the tenant is the one claiming that she requested a repair, the tenant has the onus to prove that she did so, per Rule of Procedure 6.6.

The testimony of the parties in regard to the tenant requesting a plumbing repair was conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the tenant) has not met the burden on a balance of probabilities and the claim fails.

I find that the tenant has not proved, on a balance of probabilities, that she requested a repair in 2019. The tenant did not specify when she requested the repair in 2019. The tenant did not submit the written request for repair.

The tenant admitted in the application that she is responsible for half of the flood damage. I asked her to explain this, and the tenant provided a vague testimony. The tenant paid the first invoice in the amount of $197.40 and did not pay the second invoice in the amount of $2,021.25.

The landlord warned the tenant in writing that she had to pay for the damage and the tenant did not make the payment.

Section 47(1) of the Act states:

> (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> […]
> (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;

Based on the landlord's convincing testimony, the April 07, October 25 and December 15, 2021 letters, and the December 02, 2021 invoice, I find the landlord proved, on a balance of probabilities, that the tenant has caused extraordinary damage to the rental building, as unit 1** was heavily flooded and the amenities room was also flooded.

I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(f) of the Act. I dismiss the tenant's application without leave to reapply.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states

the effective date and it is in the approved form. I confirm the Notice and find the tenancy ended on March 31, 2022.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order. Should the tenant 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: June 24, 2022

Residential Tenancy Branch