



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated March 2, 2022 (the "One Month Notice") pursuant to section 47; and
- an order for the Landlord to make repairs to the rental unit pursuant to section 32.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Tenants to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

I advised the Landlord that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. The Landlord confirmed he was not recording this dispute resolution hearing.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord testified he sent his evidence for this hearing via registered mail to the Tenants' legal counsel SR on June 8, 2022. The Landlord provided a tracking number which confirms that SR received the package on June 9, 2022. That tracking number is referenced on the cover page of this decision. I find that the Landlord has served the

Tenants with his evidence in accordance with section 88 of the Act and Rule 3.15 of the Rules of Procedure.

Preliminary Matter – Tenants' Non-attendance

Rule 7.3 of the Rules of Procedure provides as follows:

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 that party or dismiss the application with or without leave to reapply.

As the Tenants did not attend this hearing by 1:40 pm while the Landlord duly attended, and in the absence of any submissions or substantive evidence, I dismiss the Tenants' claim for an order to repair the rental unit without leave to re-apply.

The Landlord testified that the Tenants still reside in the rental unit. The Landlord confirmed he wishes to seek an Order of Possession under the One Month Notice. Therefore, I directed that the hearing be conducted in the absence of the Tenants in order to adjudicate this issue.

I note the Tenants have submitted some limited evidence for this application. However, Rule 7.4 of the Rules of Procedure states:

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.

In this case, I do not consider the Tenants' submitted evidence as no one attended the hearing on the Tenants' behalf to present that evidence.

Issue to be Decided

Is the Landlord entitled to an Order of Possession under the One Month Notice?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on July 1, 2020. The parties signed a lease renewal for another one-year fixed term starting on July 1, 2021 and ending on June 30, 2022. Rent is \$1,450.00 due on the first day of each month. The Tenants pay 35% of the utilities, which they share with the Landlord who lives in the upper suite. The Tenants paid a \$725.00 security deposit which is held by the Landlord.

A copy of the One Month Notice has been submitted into evidence. The One Month Notice is dated March 2, 2022 and has an effective date of April 30, 2022. The One Month Notice indicates 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; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk.

In addition, the One Month Notice provides the following details of cause (portions redacted for privacy):

2022-03-01 – [Tenant] (GT) rapidly walked to within inches of the garage door and immediately yelled at [Landlord] (LC) for multiple minutes; video and audio available; this is after a warning letter given in Oct. 2021.

2021-12-20 – Furnace had a breakdown, which turned out to be a simple blown fuse, tenants refused emergency access to the landlord (LC) and demanded 24 hours notice, further, on 2021-12-21, GT refused to let LC accompany the [furnace] technician into the suite to look at the furnace.

2021-10-05 – GT verbally abusive, audio recording available, LC was giving a printed reply to GT text (GT had previously requested communication by letter) about GT's request to disable heat to the basement.

2021-09-24 – GT swore extremely loudly at LC, just as LC had just walked past the basement door.

2021-08-26 – GT verbally abusive for 11 minutes, audio available.

2021-08-10 – GT verbally abusive about the utilities split for multiple minutes.

During the hearing, the Landlord provided affirmed testimony to describe the above incidents in detail. The Landlord also submitted extensive documentary, audio, and video evidence to support his submissions.

Analysis

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.

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
 - (e) when given by a landlord, be in the approved form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I accept the Landlord's testimony and signed Proof of Service to find that a copy of the One Month Notice was left in the Tenants' mailbox on March 2, 2022. Pursuant to section 90(d) of the Act, I find the Tenants are deemed to have received the One Month Notice on March 5, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until March 15, 2022 to dispute the One Month Notice. Records of the Residential Tenancy Branch disclose that the Tenants submitted this application on March 10, 2022. I find the Tenants made this application within the 10-day dispute period required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure states that the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Sections 47(1)(d)(i), (ii), and (iii) of the Act state as follows:

Landlord's notice: 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;

In this case, I am satisfied that the Landlord has established cause for issuing the One Month Notice to end the tenancy under section 47(1)(d)(i) of the Act. I have reviewed the audio and video recordings submitted by the Landlord. I find that the Landlord has established, on a balance of probabilities, that the Tenant GT has been aggressive and verbally abusive to the Landlord on multiple occasions. I find GT's verbal abuse, which includes the use of profanity, to be unwarranted in the circumstances. Based on the Landlord's evidence and testimony, I am satisfied that GT has significantly interfered with and unreasonably disturbed the Landlord.

I find it is unnecessary to consider whether the Landlord has also established cause under sections 47(1)(d)(ii) and (iii) of the Act.

Based on the above, I dismiss the Tenants' claim to dispute the One Month Notice, without leave to re-apply.

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.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenants' application, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

As the effective date of the One Month Notice has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

Conclusion

The Tenants' application is dismissed in its entirety without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenants. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and 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 30, 2022

Residential Tenancy Branch