Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Tenant applies to cancel a One-Month Notice to End Tenancy signed on April 26, 2022 (the "One-Month Notice") pursuant to s. 47 of the *Residential Tenancy Act* (the "*Act*").

The hearing for this matter was conducted during two appearances with he first taking place on June 20, 2022 and the second on July 19, 2022.

A.R. appeared as the Tenant. P.B. and V.B. appeared as the Landlords. S.D. appeared as counsel for the Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlords advise that the One-Month Notice was posted to the Tenant's door on April 27, 2022. The Tenant acknowledges receiving the One-Month Notice on April 27, 2022. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* and was received by the Tenant on April 27, 2022.

The Tenant advises that the Notice of Dispute Resolution and evidence were served on the Landlords, though there was acknowledgement that additional evidence was served by placing it in the Landlord's mailbox on June 14, 2022. The Landlords acknowledged receipt of the Tenant's application materials but objected to the late evidence.

Rule 3.14 of the Rules of Procedure requires applicants to serve their evidence at least 14-days before the hearing. The 14-day deadline is intended to provide sufficient time for respondents to organize and serve their responding evidence, which must be served at least 7-days before the hearing as per Rule 3.15.

In this instance, the Tenant admits to serving evidence late, presumably in response to the Landlord's responding evidence. The Rules of Procedure do not contemplate applicants providing response evidence to the respondent's response evidence. Such a process would run afoul Rule 3.13, which requires applicants to serve their evidence in a single complete package. Indeed, there could conceivably be a never-ending cycle of response evidence, where parties are constantly providing evidence in response to what they had just received.

I disallow the Tenant's late evidence as she had ample time and opportunity to serve her evidence in compliance with the Rules. The One-Month Notice in question clearly outlined the causes the Landlord argue justify ending the tenancy.

With respect to the original evidence and the Notice of Dispute Resolution, I find that pursuant to s. 71(2) of the *Act* the Landlords were sufficiently served with these materials.

The Landlords indicate they served their responding evidence on the Tenant on June 9, 2022 by posting it to the Tenant's door. The Tenant acknowledges receipt of the Landlords' evidence and raised no objections with respect to service. I find that pursuant to s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlords' evidence.

Preliminary Issue – Additional Evidence from the Landlords

Following the adjournment on June 20, 2022, I provided interim reasons with direction that neither party would be permitted to serve additional documentary evidence. Despite my clear direction on this point, the Landlords submitted additional evidence to the Residential Tenancy Branch on July 5, 2022 and indicate it was served on June 30, 2022. The Tenant objected to the inclusion of the evidence as she was not permitted to provide evidence in response due to the directions I provided in my interim reasons.

I closed documentary evidence submissions on the basis that oral submissions had already started. This was done to ensure that the parties would not backfill their

positions with additional documentary evidence based on the submissions that were made during the hearing. Landlord's counsel advised that the new evidence was in relation to an incident of loud music on June 22, 2022 and that it is relevant to the issues in dispute.

With respect, I do not agree. An alleged incident of the Tenant being loud on June 22, 2022 cannot be a justification for a One-Month Notice issued on April 27, 2022. I accept that this may be indicative of a repeating pattern but it cannot form the basis for why the One-Month Notice was served on the Tenant in the first place.

I do not include the additional documentary evidence provided by the Landlords after the hearing commenced on the basis that it contravenes my clear directions in the interim reasons, the Tenant objected to its inclusions, and that it is not strictly relevant to why the One-Month Notice was issued in the first place.

Issues to be Decided

1) Should the One-Month Notice be cancelled?
2) If not, are the Landlords entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit on August 15, 2022.
- Rent of $1,268.75 is due on the first of each month.
- The Landlords hold a security deposit of $625.00 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence. The subject rental unit is a basement suite and the Landlords reside in the main portion of the property.

The One-Month Notice, which has been put into evidence, states that the Landlords seek to end the tenancy for the following causes:

- The Tenant has allowed an unreasonable number of occupants in the rental unit.
- The Tenant is repeatedly late in paying rent.

- 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 Landlords' property at significant risk.
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after being given written notice to do so.

The One-Month Notice has an attached schedule detailing the causes for ending the tenancy. A warning letter dated March 16, 2022 detailing the various causes was also put into evidence by the Landlord.

The Landlords allege that the Tenant's son resides at the property, which is denied by the Tenant. The Landlord provides videos in which an individual, presumably the Tenant's son, can be seen entering and leaving the property with a key for the rental unit. The Landlords say that the Tenant's son has his mail sent to the property.

The Tenant indicates in written submissions that her son does have his mail sent to the rental and occasionally stays overnight at the property (approximately 3 to 4 times per month). She argues that this does not mean he lives there and further argues that it is not a breach of her tenancy agreement to have her son's mail sent to the rental unit. A statement from the Tenant's son, which is undated, states that rental unit is his mailing address but that he is not residing at the rental unit.

The Landlord further alleges that the Tenant has been repeatedly late in paying rent, indicating that rent had been paid late for the following months:

- May 2021
- August 2021
- November 2021
- December 2021
- January 2022
- March 2022
- April 2022

Landlord's counsel also mentioned rent was paid late in May 2022. The Landlords' counsel directed me to a series of e-transfer deposits, indicating rent was received on

May 3, 2021, August 2, 2022, November 5, 2021, December 2, 2021, January 4, 2022, January 12, 2022, March 7, 2022, April 4, 2022, May 2, 2022, and May 12, 2022.

Counsel advises that the Tenant withheld $450.00 from rent unilaterally and that she has been ordered to pay that amount to the Landlords as per the decision and order issued on September 21, 2021. Counsel says that the Tenant has not paid the amount listed in the order. The Tenant did not deny this point.

The Tenant argues that she sends her rent on-time via e-transfer and the issue is when it is received by the Landlord. She indicates that the payment for August 2021 was sent on July 31, 2021 irrespective of when the Landlord received it. The Tenant does, however, acknowledge paying rent late in November 2021, December 2021, January 2022, and March 2022. The Tenant argues that the late rent payment for March 2022 was due to a hearing the parties were scheduled to attend in early March and that she delayed paying rent pending the outcome of that decision.

Further submissions were made by the Landlord with respect to an ongoing issues following water pipe breaking in January 2022. The Landlords evidence includes a report from a property restoration company that is undated and email from the Landlords' insurance adjuster dated January 21, 2022. The evidence indicates that water made its way into the rental unit after an exterior water line broke due to the freezing and that the flooring needed repaired. The restoration company's report indicates that the rental unit contents would need to be lifted off the floor. The adjuster's email indicates that the repairs would take 2 months to complete given the drying time necessary. Another report dated January 17, 2022 from another company was provided by the Landlords and it details a preliminary assessment of the damage to the rental unit and the work needed to remediate it.

The issue of the water damage was the subject of a prior application before the Residential Tenancy Branch. The Landlords previous application was heard on March 14, 2022 and the decision was rendered on March 15, 2022. The Landlords had applied for an order of possession due to an alleged frustration of the tenancy agreement. The arbitrator in that instance found that the tenancy agreement was not frustrated based on the evidence provided. That decision mentioned that the Tenant was not to interfere with the Landlords' right to enter the rental unit and make the necessary repairs.

The letter of March 16, 2022 referenced above outlines that the Landlord requested that the rental unit be vacant on April 1, 2022 so that repairs could begin. The Landlords say

that the Tenant did not vacate the rental unit. They further say that repairs were to begin on April 4, 2022 but that the Tenant blocked access to the rental unit.

Subsequent notices were given for entry into the rental unit, including one dated April 13, 2022 from the office of the Landlords' lawyer requesting access on April 19, 2022 to undertake a mould inspection. The Tenant responded via email the same day to Landlords' counsel saying that "Nobody's coming in my suite, I have Covid".

A letter from the mould inspector dated June 1, 2022 was put into evidence by the Landlords. It indicates that the inspector did attend the rental unit on April 19, 2022 but did not complete the inspection. At the same time as the mould inspector was present, the Landlords had a locksmith attend the rental unit to ascertain whether the Tenant had changed the locks. The mould inspector's letter indicates that an altercation took place between the Tenant and the locksmith and that the Tenant threatened the locksmith. The mould inspector is said to have felt unsafe and abandoned the inspection due to the aggressive behaviour.

The Landlords put into evidence an email from the locksmith dated April 19, 2022 indicating that they were unable to complete their assessment of the lock du to the "violent reaction of the man who was on the premise" and that if the assessment were to be completed they would insist on the RCMP also be present.

The Tenant does not deny changing the lock and says this was due to the Landlord accessing the rental unit without authorization on April 15, 2022. The Landlords deny entering the rental unit without first providing notice.

The Tenant further says that there is no mould present within the rental unit and that this has been fabricated by the Landlords. She further denies that there was any aggressive behaviour as alleged, arguing that if there were the Landlords would have submitted video of it given the location of their security camera. The Landlords do submit video of what appears to be the inspector packing his equipment and the Tenant asking them to leave.

The Landlord P.B. testified that she has been coughing for the past three months and that her husband is short of breath. She says that a mould test was conducted at the door to the rental unit within the house and that it came back positive. She further says that the mould that was detected is hazardous to human health. No copy of this mould report was put into evidence by the Landlords.

Counsel argues that the Tenant is obstructing the Landlords ability to undertake the necessary repairs and that the delay is likely exacerbating the water damage. It was argued that the delay may cause issues with the Landlords insurance coverage following the loss.

The Landlords also argue that the Tenant is excessively loud such that it disrupts their peace and quiet. The Landlord submits a series of decibel readings from May 28, 2022 until June 7, 2022 which are all in excess of 77 decibels. Counsel advised that the residential property is located in a quiet zone as per municipal bylaws and directed me to the bylaw which states that noise is considered excessive in a quiet zone if it exceeds 70 decibels. Counsel advises that another reading on June 22, 2022 took place and registered 108 decibels. A series of audio recordings were provided by the Landlords as proof of the noise level, which are said to have been recorded between January 17, 2022 and June 7, 2022.

The Landlord also called a witness, H.M., who testified that she was within the Landlords home in January 2022 and could clearly hear and identify the music coming from the Tenant's rental unit and that the music was playing for hours while she was there. She further testified that it was difficult to talk over the music and that, in her opinion, she would find it difficult to sleep through the noise.

The Tenant argues that the Landlords are not experts regarding sound measurements and that there that the evidence provided doesn't specify where the recordings or readings took place. The Tenant argues the evidence could be fabricated. The Tenant denies playing music loudly.

The parties spoke to the conflict between them.

The Tenant provides the file number for four separate matters before the Residential Tenancy Branch. The Tenant says that she has been subjected to repeated and unfounded notices to end tenancy and that the present One-Month Notice is a continuation of the pattern.

The Tenant directed me to a letter dated March 25, 2022 from the arbitrator who conducted the previous hearing regarding the frustrated tenancy. That letter was drafted following a clarification request filed by the Landlords in which counsel requested certain wording be added to the decision. The arbitrator declined the clarification

request and indicated that if the wording were to be included, further wording would be added warning the Landlords not to breach the Tenant's right to quiet enjoyment, which would include issuing repeated and unfounded notices to end tenancy. The Tenant did not provide copies of the previous notices to end tenancy.

The Tenant argues that the Landlords have been attempting to evict her since she requested repairs to the rental unit. She indicates that she has filed an application for repairs which is coming on for hearing on August 30, 2022.

The Landlords indicate that P.B. has suffered declining health due the conflict from the tenancy. A note from P.B.'s physician dated September 15, 2021 indicates that she has been diagnosed with a heart condition and stress can (and is) negatively affecting her condition.

The Landlord's daughter, C.S., was called as a witness and testified that she was concerned for her mother's well-being and that she has been on medication for stress. The daughter further testified that her mother has become more reclusive and is a different person that she used to be, is less social, and has a difficult time being social with family at her home due to the noise from the Tenant's rental suite. The daughter says that the Tenant has called her mother a "cunt" and a "fucking bitch" and berated her when an automatic sprinkler sprayed water on the Tenant's car. The daughter said her mother wakes at 4:00 am to ensure that the Tenant's car would not be struck by water from the sprinkler. A video of the Tenant yelling about the sprinkler hitting her car was put into evidence by the Landlords.

The daughter alleges that the Tenant has slashed the tires to the Landlords' car. The Tenant denied slashing the Landlords' tires and indicates that there is no evidence of it. Under cross-examination, the Landlord's daughter says that the video was not provided to the Residential Tenancy Branch as it had been referred to Crown Counsel, who requested that the video not be provided to the Tenant as part of these proceedings.

The Tenant alleges that she was struck by the Landlord and submits a photograph of where she was says she was struck by the Landlord.

Further allegations were raised by both parties. The Tenant alleges that the Landlords video camera is set up to look into her rental unit and is an invasion of her privacy and that the Landlords shut off power to the rental unit. The Landlords allege that the Tenant or the Tenant's son smokes at the property; that the Tenant stole an Amazon package;

and that the Tenant has blocked the Landlords car with hers. These allegations and counter-allegations are all respectively denied by the other party.

Analysis

The Tenant seeks to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord.

I have reviewed the One-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

The One-Month Notice was issued under ss. 47(1)(b) (repeated late rent), 47(1)(c) (unreasonable number of occupants), 47(1)(d) (unreasonable disturbances, jeopardizing health/safety, putting property at risk), and 47(1)(h) (breach of a material term).

Dealing with the first issue under s. 47(1)(b) for repeated late rent payments, Policy Guideline #38 provides the following guidance with respect to the issue:

> Three late payments are the minimum number sufficient to justify a notice under these provisions.
>
> It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late
>
> A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

> In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.
>
> Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Presently, there was some dispute raised by the Tenant with respect to when the alleged rent payments were made and received. However, the Tenant admits that she was late in paying rent for November 2021, December 2021, January 2022, and March 2022.

The Tenant indicates that her late rent payment in March was due to the hearing that had been scheduled and that she wished to wait for its outcome before paying. I note that the Landlord's evidence indicates that the rent payment for March 2022 was received on the 7th. The hearing in question took place on March 14, 2022. Given that rent was received before the hearing, I find that the Tenant has used this as an excuse.

Further, s. 26 sets a clear expectation that tenants are to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act* unless the tenant has a right to deduct it under the *Act*. The Tenant did not argue that she had any reason under the *Act* not to pay rent. She did not argue waiver or estoppel. There is no explicit or implicit reason upon which to conclude that either waiver or estoppel would apply under the circumstances.

I note that the Tenant did not admit to failing to pay rent when as per the September 21, 2021 decision, this despite the fact that she clearly failed to pay rent in full on that occasion based on the previous order. I find that the Tenant further failed to pay rent in full on that occasion as the September 21, 2021 decision and order clearly demonstrates the opposite.

Based on the Tenant's admissions and the September 21, 2021 decision, I find that the Tenant failed to pay rent when due on April 1, 2021, November 1, 2021, December 1, 2021, January 1, 2022, and March 1, 2022. I find that the Landlord acted promptly by issuing the One-Month Notice in April 2022 after rent had not been paid when due on March 1, 2022. I find that the Tenant has been repeatedly late in paying her rent and that the Landlord is successful in this ground of the notice.

As I would uphold the One-Month Notice on this ground, I dismiss the Tenant's application to cancel the One-Month Notice. I would note that I have reviewed the other files put to me by the Tenant and none of them dealt with the issue of repeated late rent payments such that the matter has not previously been decided.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. Given that that has occurred, I grant the Landlord an order of possession.

I decline to consider or comment on the other grounds raised by the Landlords in the One-Month Notice or the various allegations raised by the parties as it is unnecessary to do so based on my findings above.

Conclusion

The Tenant's application to cancel the One-Month Notice is dismissed without leave to reapply as the Tenant admits to being repeatedly late in paying rent.

The Landlord is entitled to an order of possession under s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order of possession.

It is the Landlords' obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlords with 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: July 21, 2022

Residential Tenancy Branch