Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

Both parties attended the hearing. The landlord was represented by building manager AA (the landlord). 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.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

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.

Issues to be Decided

Is the tenant entitled to cancellation of the 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 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 October 01, 2013. Monthly rent is $945.00 plus utilities, due on the first day of the month. At the outset of the tenancy a security deposit of $430.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It states:

> 14. USE OF RENTAL UNIT. The tenant and his guests must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial, political, or business purposes. No public meetings or assemblies may be held in the rental unit. No business or commercial advertising may be placed on or at the rental unit or the residential property. When the landlord supplies window coverings, the tenant's drapes and curtains may not be used without the landlord's prior written consent. **The tenant will not make or cause any structural alteration to be made to the rental unit or residential property. Painting, papering, or decorating of the rental unit or residential property may be done only with the landlord's prior written consent and with landlord approved colours**. Hooks, nails, tapes, or other devices for hanging pictures or plants, or for affixing anything to the rental unit or residential property will be of a type approved by the landlord and used only with the landlord's prior written consent. **The tenant may not install a washer, dryer, dishwasher, freezer, or similar equipment without the landlord's prior written consent. Any appliance or equipment supplied by the landlord must not be repaired or removed without the landlord's prior written consent.** The tenant must ensure that the rental unit is appropriately ventilated, exhaust fans are regularly used, and must follow reasonable housekeeping practices, to minimize the presence or accumulation of moisture, thus preventing the occurrence of mould or mildew.

(emphasis added)

Both parties agreed the tenant received the Notice on March 28, 2022. The tenant submitted this application on April 04, 2022 and continues to occupy the rental unit.

The landlord submitted the Notice into evidence. It is dated March 28, 2022 and the effective date is April 30, 2022. The reasons to end the tenancy are:

- 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.

The details of the cause are:

> Tenant has installed 17 speakers on the ceiling and painted numerous multi colored murals throughout their suite and has not removed or repaired them despite being asked to resolve the extensive damage. Tenant as started more murals since being asked to remove the extensive damage. Tenant is not following reasonable housekeeping in the kitchen/bathroom which is causing a concern of a grease fire in his oven and permanent damage to the floors.
> Tenant has altered his range hood fan so it is not ventilating which is a health and safety concern. The condition of the suite invites constant ants and vermin into the suite and surrounding suites to a considerable expense of the owners.

The landlord affirmed that all the warning letters served to the tenant were attached to the rental unit's front door on the letter's dates. The tenant stated he does not completely read the documents attached to his door, as he does not like to receive documents on his door. The tenant contacts the landlord's representatives and asks them to verbally explain any tenancy issues. Later the tenant testified that he brings the documents to work and glances over them at work.

The landlord inspected the rental unit in the summer of 2021 and noticed the rental unit was not clean. The stove was dirty and there was mould in the bathroom. The landlord said the mould was caused by lack of cleanliness. The tenant affirmed that the rental unit was built in the 1980s and the bathroom did not have mould.

The landlord served the August 24, 2021 letter to the tenant:

> Posted on suite door.
> August 24, 2021.

> **Further to the inspection of your suite on August 11, 2021, we have some concerns regarding suite condition.** We understand that life gets busy and sometimes housekeeping is one of the items we let get behind. Our hope is that this is the case, and the concerns can be resolved in a timely manner. Please take some time to resolve the concerns stated below prior to the follow up inspection. Follow up inspections will take place within 45 days of the initial inspection and the expectation is that there will be prompt, significant and permanent improvements to your suite condition.
> […]
> 2. **Permanently remove all the unapproved items being stored in your suite and on your deck and keep it clean.** Unapproved items on your deck include any furniture that is not patio furniture, broken or damaged items, storage items and any garbage or recycling.
> […]
> I remind you that your tenancy agreement obligates you to maintain your suite and deck; the inspection revealed evidence that you are not meeting your obligations as a tenant at […].
> **Management will post a Notice to Enter on your suite door for a second inspection in approximately 45 days following this notice.**
>
> (emphasis added)

The landlord inspected the rental unit on October 25, 2021 and noticed the tenant installed 17 speakers in the living room's ceiling and painted several floor to ceiling wall murals throughout the rental unit. The landlord did not authorize the tenant to paint the wall murals or to install the speakers. The landlord warned the tenant on November 09, 2021 that he must remove the speakers:

> Posted on suite door.
> November 09, 2021
> Further to the inspection of your suite on October 25, 2021, we have some continued concerns regarding suite condition. We understand that life gets busy and sometimes housekeeping is one of the items we let get behind. Our hope is that this is the case, and the concerns can be resolved in a timely manner. Please take some time to resolve the concerns stated below prior to the 2nd follow up inspection. The second follow up inspections will take place within 60 days of the second inspection and the expectation is that there will be prompt, significant and permanent improvements to your suite condition.
> […]
> **In addition to the above noted items it has been noted that without prior permission of any kind you have destroyed the property by usage of extensively**

> **coloured paints on the walls. You have also mounted dozens of speakers to the ceiling in your living room. As a reminder your tenancy agreement states**…[CLAUSE 14 OF THE RENTAL UNIT]
> […]
> I remind you that your tenancy agreement obligates you to maintain your suite and deck; the inspection revealed evidence that you are not meeting your obligations as a tenant at [rental unit].
> Management will post a Notice to Enter on your suite door for a second inspection in approximately 60 days following this notice.
>
> (emphasis added)

The landlord inspected the rental unit on February 08, 2022 and noticed the rental unit was not clean, the tenant did not remove the speakers and did not clean the walls. The bathroom had mould in the shower curtain, the oven and the range hood fan were very greasy and caused a fire risk. The landlord served the February 14, 2022 Caution Notice:

> On Aug 11, 2021 a suite inspection was done and the suite was found to have several tenancy violations. The tenant was informed to resolve the issues in a letter dated August 24, 2021 and a follow up inspection was performed on October 25th.
> None of the issues had been resolved. The tenant was again advised on November 9th in writing to resolve the issues. On February 8th another follow up inspection was performed and the issues remain unresolved. Health and safety concerns. Pests.

The landlord also served the February 14, 2022 letter:

> Further to the inspection of your suite on Feb 8, 2022, we have some continued concerns regarding suite condition.
> […]
> **In addition to the above noted items it has been noted that without prior permission of any kind you have destroyed the property by usage of extensively coloured paints on several of the walls. You have also mounted dozens of speakers to the ceiling in your living room. As a reminder your tenancy agreement states…**[CLAUSE 14 OF THE RENTAL UNIT]
> **Please have these speakers and paint removed before the next suite inspection. […]**
> I remind you that your tenancy agreement obligates you to maintain your suite and deck; the inspection revealed evidence that you are not meeting your obligations as a tenant at [rental unit]. You are in violation of several areas of your tenancy agreement and for these reasons and your decision to ignore managements request to clean the

> suite and comply with usage restrictions if these items are not resolved by the next inspection will be required to issue you a one-month notice to evict.
> Management will post a Notice to Enter on your suite door for a third follow up inspection in approximately 15 days following this notice.
>
> (emphasis added)

The tenant believes he did not get the February 14 letter and caution notice.

The landlord noticed that the bathroom's sink clogged on Friday, March 04, 2022. The landlord attached a notice to the rental unit's front door on March 04, 2022:

> We are having plumbing issues with the bathroom sinks in your 'stack'. We have a plumber coming out on Monday, March 7 at 12:00. Please do not use your bathroom sink until we contact you on Monday to advise that the work has successfully been completed. Thank you.

The landlord stated the tenant used the sink and this caused flooding damage to two units below the tenant's unit.

The tenant testified he got the March 04, 2022 Notice on March 05, 2022 and he stopped using the sink immediately. The landlord called the tenant once on March 04, 2022 and left a voicemail. The tenant did not hear the phone ringing and only noticed the voicemail a few days later. The tenant said the landlord did not knock on the door to inform the tenant in person that he could not use the sink.

The tenant believes the tenant served the Notice because of the flooding incident.

The landlord inspected the rental unit on March 16, 2022 and noticed the range hood fan was greasy and not functioning. The mould was cleaned, and the landlord re-caulked the bathroom. The speakers and wall murals were not removed.

The landlord submitted photographs into evidence showing the speakers and the wall murals on February 08 and March 16, 2022. The photographs show large speakers hooked to the living room ceiling and connected with several cords. The wall murals are bright, colourful floor to ceiling paintings. The landlord believes that each speaker requires four screw mounts. The tenant also submitted photographs showing the wall murals.

The tenant affirmed he thoroughly cleaned the rental unit after the March 16, 2022 inspection. The tenant stated the landlord improperly installed the hood fan and the landlord fixed it before or after the landlord served the Notice.

The landlord testified the tenant did not ask for repairs to the hood fan.

The landlord said the tenant caused extraordinary damage to the rental unit by installing the 17 speakers in the living room ceiling, painting the wall murals and by not cleaning the bathroom mould sooner.

The landlord served the March 24, 2022 letter:

> Posted on suite door
> March 24, 2022
> Further to the inspection of your suite on March 16, 2022, we have some continued concerns regarding suite condition. Our hope is that this is the case, and the concerns can be resolved in a timely manner. The expectation is that there will be prompt, significant and permanent improvements to your suite condition.
> […]
> **In addition to the above noted items it has been noted that without prior permission of any kind you have destroyed the property by usage of extensively coloured paints on several of the walls. You have also mounted 17 speakers to the ceiling in your living room. As a reminder your tenancy agreement states...[CLAUSE 14 OF THE RENTAL UNIT]**
> […]
> **In our letter dated Feb 14, 2022 we had asked that you resolve the breach in your tenancy agreement by removing the unapproved paint from your walls and speakers from the ceiling but these items remain. In fact, it seems there are additional murals being started on the bedroom walls.**
>
> In addition to this at your last inspection it was noted that your suite requires several repairs. The oven lower element is not working, and the range hood fan is not working. We are unable to complete repairs on these items until they are thoroughly cleaned. They are currently coated with so much grease and food debris that we would not be able to perform repairs. Unresolved - stove top has been cleaned but inside oven and hood fan are still a major concern. During our suite inspection you were using the oven for heat and the oven was on, this is a concern as it could cause a grease fire in its current state. Also, the range hood fan has been altered and no longer connects to a vent. Your move in report indicates that the hood fan was in good working order at the move in, it has since been removed and reinstalled directly to the cupboard above making it not connect to the ventilation.

(emphasis added)

The landlord did not conduct another inspection after March 16, 2022 because she believes “the relationship with the tenant has been exhausted”. The landlord believes the tenant removed the speakers and the wall murals after the landlord served the Notice.

The tenant affirmed that he removed the speakers and the wall murals after the landlord served the Notice.

The tenant stated he did not receive verbal or written warnings about the speakers and wall murals. Later the tenant testified that he may have received warnings from the tenant after the flooding issue on March 07, 2022.

The tenant said the landlord is harassing and spying on him and not providing warnings about the issues mentioned in the Notice. The tenant has a good relationship with his neighbours and has been working at the same job for ten years.

The landlord submitted a letter signed by tenant IW: “AA is a fantastic manager, and she tried to make everyone happy here at [the rental unit]. We are lucky to have her.”

The landlord submitted a letter dated June 23, 2022 signed by tenant AW: “Throughout the entire process AA was respectful and showed a genuine willingness to help us resolve the concerns.”

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 tenant confirmed receipt of the Notice on March 28, 2022 and submitted this application on April 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 about serving notices by attaching them to the tenant’s front door was convincing. I accept the tenant’s testimony that he does not completely read the documents that he finds on his rental unit’s door and that the tenant “glances over them at work”.

Section 88(g) of the Act states:

> All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
> […]
> (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

Based on the landlord's convincing testimony, I find the landlord served the August 24 and November 09, 2021 letters, February 14 caution notice, February 14 letter, March 04 and 24, 2022 letters on the dates of the documents, in accordance with section 88(g) of the Act.

I deem the tenant received the November 09, 2021 letter on November 12, 2021, per section 90 (c) of the Act.

I accept the landlord's uncontested testimony and the November 09, 2021 letter that the landlord learned on October 25, 2021 that the tenant installed 17 speakers in the living room's ceiling and painted several floor to ceiling murals throughout the rental unit. I find the November 09, 2021 letter clearly warned the tenant that he breached section 14 of the rental unit and caused extraordinary damage to the rental unit by installing the speakers and painting the murals ("you have destroyed the property").

I deem the tenant received the February 14, 2022 letter on February 17, 2022, per section 90(c) of the Act.

I accept the landlord's uncontested testimony and the February 14, 2022 letter that the landlord inspected the rental unit again on February 08, 2022 and noticed the tenant did not remove the speakers and did not repair the walls. I find the February 14, 2022 clearly warned the tenant that the landlord may serve a one month notice to end tenancy if the tenant does not address the issues pointed out by the landlord, including the speakers and wall murals.

I accept the landlord's uncontested testimony that the landlord inspected the rental unit again on March 16, 2022 and noticed the tenant did not remove the speakers and did not repair the walls. The landlord served the Notice 12 days after March 16, 2022 inspection.

The landlord served the first warning about the speakers and the wall murals on November 09, 2021. The Notice does not mention the March 04, 2022 flooding incident. I find the landlord did not serve the Notice because of the March 04, 2022 flooding incident.

Based on the landlord's convincing testimony throughout the hearing and the letters signed by tenants IW and AW, I find the landlord is not harassing or spying on the tenant. I find the landlord inspected the rental unit and clearly warned the tenant in writing about the speakers and wall murals.

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;

Residential Tenancy Branch Policy Guideline 1 states:

> Nail Holes:
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> **2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws** or tape have been used and left wall damage.
> **3. The tenant is responsible for all deliberate or negligent damage to the walls.**
> PAINTING
> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.
> **The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**
>
> **(emphasis added)**

In the February 17, 2017 decision from the British Columbia Supreme Court, Kozlowski v. Mackey, 2017 BCSC 257, Justice Hyslop writes: "[35]The Arbitrator considered and interpreted the words "extraordinary" and "damage" within the context of the facts he

found. He was entitled to do so. In addition, he considered KV's and the respondent's rationalization for cutting the branches from the trees"

Based on the photographs submitted into evidence by both parties and the undisputed testimony, I find the 17 speakers attached to the living room's ceiling are large objects with cords around them. I further find the tenant painted several floor to ceiling mural walls throughout the rental unit with bright colourful paint. Based on the landlord's testimony and the photographs submitted into evidence, I find that each speaker required four screw mounts and the tenant is responsible for 68 screw holes on the living room's ceiling. I find that 17 speakers on the living room's ceiling and the floor to ceiling murals are a damage beyond what is usual, ordinary or regular and that the 17 speakers are an exceptional damage to the rental unit.

Based on the above, I find, on a balance of probabilities and within the context of the facts above mentioned, that the tenant caused extraordinary damage to the rental unit by installing the speakers and painting the mural walls.

I accept the tenant's uncontested testimony that he removed the speakers and the wall murals after the landlord served the Notice on March 28, 2022.

In the May 06, 2022 decision from the British Columbia Supreme Court, Senft v Society For Christian Care of the Elderly, 2022 BCSC 744, Justice Wilkinson writes:

> [39] The arbitrator failed to consider post-Notice conduct of the petitioner. The arbitrator found that the evidence of the current state of the rental unit, and its cleanliness after the petitioner's retention of cleaners, was irrelevant. However, as this Court found in McLintock at paras. 58-59, post-notice conduct is relevant when deciding whether an end to tenancy was justified or necessary in the context of the protective purposes of the RTA.

I find the tenant's post-Notice conduct in this matter is not relevant, as the tenant caused extraordinary damage to the rental unit and did not act to repair the damage from November 12, 2021 (the date I deemed the tenant received the November 09, 2021 letter) until after the landlord served the Notice on March 28, 2022. The landlord warned the tenant in writing on November 09, 2021 and February 14, 2022. I find the protective purposes of the Act do not authorize the tenant to continue a tenancy when the tenant causes extraordinary damage to the rental unit, especially when the landlord serves two clear warnings, and the tenant fails to act until after the landlord served the

Notice. Furthermore, I note that there is no evidence that the tenant repaired the screw holes related to the speakers.

I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(f) of the Act. I decline to consider any other reasons to end the tenancy, as the landlord proved one reason to end the tenancy.

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 April 30, 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 he 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: August 03, 2022

Residential Tenancy Branch