



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LAT, RR, OLC, FFT**

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 (the "1 Month Notice") pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing one of the landlords noted that their name was incorrectly provided in the application and gave the correct spelling of their name. With the consent of the parties, I have amended the style of cause for this decision and any accompanying order to include the correct names of the parties.

Preliminary Issue – Landlord's Digital Evidence

Residential Tenancy Rule of Procedure 3.10.5 provides that the format of digital evidence must be accessible to all parties. The tenant confirmed receipt of the landlord's evidence but said they have chosen to make no attempt to view any of the materials. The tenant testified that they do not own a computer and are unable to confirm if the format of the video evidence of the landlord could be accessed as they made no attempt to view the landlord's evidence.

Rule 3.10.5 provides, in relevant part, that:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

...

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15

I find no issue with the documentary evidence of the landlords including their written submissions, copies of correspondence and photographs. I find that documentary materials are available to be viewed without the use of any computer and the tenant's failure to review these materials are borne out of their own choice rather than technological limitations.

I further note that the documentary materials have been converted to pdf format on the Branch's Dispute Management System, a format which was used by the tenant for their own documentary submissions. I find that all of these materials were available to be viewed by the tenant and find no issue of procedural fairness to consider these materials.

The landlord has submitted 6 video files in mp4 format. The tenant says they have not attempted to view these pieces of evidence and cannot confirm if they are in an accessible format.

I accept the undisputed evidence of the parties that the landlord served the tenant with their evidentiary materials including some digital evidence by way of video recordings. I find insufficient evidence that the landlords attempted to confirm if the tenant had access to the video evidence. While I find the submission of the tenant, that they do not have a computer, to be poor and they could have easily viewed the video evidence at a Service BC office, public library or other facility, I accept that the landlords failed to confirm that the tenant had access to these pieces of evidence.

Accordingly, in the principle of procedural fairness, I exclude the 6 pieces of video evidence submitted by the landlord from consideration.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in October, 2021. The monthly rent is \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a carriage house located on a property with the landlords and their family residing in the main house.

There have been previous dispute resolution hearings regarding this tenancy under the file numbers on the first page of this decision. The parties characterize their relationship

as antagonistic with both parties saying that the other is unreasonable, disruptive, and have engaged in conduct that has caused serious disturbance to them.

The landlords issued a 1 Month Notice dated April 22, 2022 with an effective date of June 1, 2022. The tenant confirmed receipt of the Notice on April 23, 2022 and filed their application to dispute on April 28, 2022.

The reasons provided on the notice for the tenancy to end are that:

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;*

The landlords gave testimony about the ongoing and escalating conduct of the tenant which has given rise to their issuance of the 1 Month Notice. The landlords testified that the tenant has been seen hiding on the common property and nearby woods observing the landlords, their guests and children. The landlord submits that when confronted the tenant has engaged aggressively with yelling, shouting and verbal threats. The landlord cites some incidents prior to the issuance of the 1 Month Notice when the tenant was driving their vehicle recklessly at high speeds on the property, incidents where the tenant was nakedly exposing themselves from the window of their rental suite, and damage caused to privacy shutters which the landlord installed after incidents of exposure.

The landlords testified about the ongoing anxiety, fear and discomfort caused to all of their family members by the tenant and their behaviour. The landlords said that the tenant appears to be observing and stalking them from the bushes and interactions are aggressive. The landlord said that the tenant makes a point of sitting and staring at their 2 year old child when the family are spending time in their yard.

The landlords submitted into evidence witness statements from guests who have observed the tenant's behaviour when they attended at the rental property as well as correspondence with the tenant.

The tenant disputes the landlord's characterization of events and denies that many of the events cited occurred. The tenant claims their vehicle is over 30 years old and

therefore could not be driven at excessive speed. The tenant accuses the landlords of fabricating their complaints and attributes any incidents of indecent exposure to the fact that the landlords failed to provide curtains for the rental unit. The tenant complains about the noise level on the property and the conduct of the landlords and their guests. The tenant testified that the activities of the landlords have caused disruption to the tenant and their pet cat. The tenant submits that all of the witness statements provided by the landlords are false and says that the landlords have orchestrated a campaign of persecution and harassment they feel has infringed on their rights to privacy and quiet enjoyment. The tenant made reference to their belief that the landlords' conduct unlawfully violates other legislations and is a targeted attack that has negatively affected their health.

The parties both agree that the ongoing conflict has continued since the issuance of the 1 Month Notice with both parties accusing the other of continued incidents of harassment, intimidation and interference.

Analysis

As the parties disagreed on much of the details giving rise to the issuance of the 1 Month Notice and their conduct to the date of the hearing, I must first make a determination on credibility. Taken in its entirety, I find the landlords to be more credible witnesses than the tenant. The landlords each provided submissions that were supported in their documentary materials and consist of facts and observations.

In contrast, the tenant's testimony consists of accusations against the landlord, conjecture about their motivations and theories of a orchestrated campaign of harassment involving multiple parties which is not supported in any third-party documentary materials. I find the tenant's suggestion that the landlord is wholly fabricating the complaints against the tenant to have no reasonable basis in the evidence and is contradicted in their own written submissions where the tenant acknowledges some of the incidents reported by the landlord.

I find the landlords to be more credible witnesses than the tenant and where the parties differ in their accounts, I find the version provided by the landlords to be more persuasive and credible.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute

resolution with the Residential Tenancy Branch. The parties agree the tenants were served with the 1 Month Notice of April 22, 2022 on or about April 23, 2022 and the tenants filed their application for dispute resolution on April 28, 2022. Accordingly, I find that the tenant was within the statutory time limit to dispute the 1 Month Notice.

When a tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

In the present case among the reasons provided by the landlord for the tenancy to end is that the tenant has significantly interfered with or unreasonably disturbed the landlord and have seriously jeopardized the health, safety or lawful right of the landlord. Based on the totality of the evidence of the parties I find the landlords' reasons for the issuance of the 1 Month Notice has merit.

I am satisfied with the evidence that the tenant's behaviour and interactions with the landlords have caused interference and disturbance which are properly characterized as unreasonable. I accept the evidence of the landlords including their testimony, documentary submissions and witness statements that the tenant has conducted themselves in a manner that was known or ought to have been known would cause distress, disturbance and fear to the landlords and their family members.

I do not find the tenant's submission that they could not possibly have been driving at excessive speeds due to the age of their vehicle to not be convincing and not supported in any documentary materials. I accept the evidence of the landlord that the tenant was driving dangerously on the property. I find that driving without care on shared property, especially where there are young children, to be an inherently dangerous and unreasonable act. I note that the landlords cite one instance when the tenant was driving recklessly at excessive speed and this is not a habitual occurrence.

While I accept the evidence of the parties that the tenant has been visible in a state of undress through the rental unit windows, I place only some weight on the incidents cited. I accept the evidence that the rental unit is a bachelor suite and some exposure may occur given the proximity of the rental unit to the common yard shared with the landlord.

However, seen in the larger context of the relationship with the parties I find that the incidents of exposure and driving on the property is part of a pattern of behaviour that has caused unreasonable disturbance to the landlord and their family members.

I accept the evidence that the tenant lurks in the bushes surrounding the rental property and observes the landlords and their children. I find this to be an inherently unreasonable and disturbing act. Based on the evidence this is not a case of the tenant enjoying their own activities in nature but actions that are directed at the landlords and their guests. The evidence before me is that the tenant dons camouflage clothing and stalks the landlord and guests, filming them and following at a distance. I find no reasonable explanation for this conduct beyond making the landlords and guests uncomfortable on the property.

I further accept the landlords' evidence that when confronted about their behaviour the tenant has responded in a verbally aggressive manner. I find the tenant's own documentary and testimonial evidence demonstrates their unreasonable belief that they are justified in their conduct as they believe the landlords to be the initial wrongdoer. I find that none of the complaints about the tenancy made by the tenant, even if they were true, to allow for the conduct and behaviour cited by the landlords.

I accept the evidence that the tenant has caused considerable disturbance to the landlord and their family through their conduct and ongoing disruptive behaviour in and about the rental property. I find the evidence, including the tenant's own documentary materials, to demonstrate irrational, unacceptable conduct and behaviour on the part of the tenant that goes beyond what would be reasonable in a tenant-landlord relationship.

I find the tenant's suggestion that every utterance by the landlords is false to be so extreme a position as to lose all credibility. I find the tenant's position that they are the hapless victims of a campaign of orchestrated ongoing harassment and bullying by the landlords and their acquaintances to have little air of reality. In order to accept the tenant's submission it is necessary to accept that the landlords have entered into a tenancy agreement and within months began harassing their own tenant and issuing a notice to end the tenancy despite the tenant having acted in a saintly and unrepachable manner. I do not find the tenant's characterization of their conduct as victims or their submission that the landlords are at blame to be supported in the materials.

Based on the totality of the evidence I am satisfied that there is sufficient basis for the issuance of the 1 Month Notice and accordingly dismiss the tenant's application to cancel the notice.

I find that the 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is signed and dated by one of the landlords, identifies the parties, the rental address and provides the reason for the tenancy to end. Accordingly, I issue an Order of Possession in the landlords' favour. As the effective date of the 1 Month Notice has passed, I issue an Order effective 2 days after service.

As this tenancy is ending I find it unnecessary to make a determination on the portions of the tenant's application pertaining to an ongoing tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This section read in conjunction with section 65(1)(f) allows me to make a retroactive reduction in the rent for a tenancy.

I find the subjective complaints of the tenant and their claims of intimidation and excessive noise to not be supported in the evidence and have little persuasive value. I find that the tenant has not established their claim on a balance of probabilities and accordingly dismiss this portion of the application without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises 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 29, 2022

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply
- How and when to issue a Notice of Additional Rent Increase - Eligible Capital Expenditures:
Visit: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases/additional-rent-increase>

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

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