



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC CNR, OLC**

Introduction

The hearing was convened as a result of two applications for dispute resolution made by the Tenants under the *Residential Tenancy Act* (the “Act”). In the first application for dispute resolution (“First Application”), the Tenants seek:

- cancellation of a One Month Notice for Cause dated March 24, 2022 (“1 Month Notice”) pursuant to section 47; and
- an order the Landlord comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 62.

In the second application for dispute resolution (“Second Application”), the Tenants seek:

- cancellation of a 10 Day Notice to end Tenancy for Unpaid Rent and/or Utilities dated April 7, 2022 (“10 Day Notice”) pursuant to section 46 of the Act; and
- an order the Landlord comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 62.

The original hearing of the Application was held on July 25, 2022 (“Original Hearing”). The Landlord and the two Tenants (JK” and “RS”) attended the Original Hearing and they were they were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As there was insufficient time for the parties to present their testimony and rebuttals, I adjourned the Original Hearing and issued a decision dated July 26, 2022 (“Interim Decision”). The Interim Decision stated that the parties were not permitted to serve, or submit to the Residential Tenancy Branch (“RTB”), any further evidence. The Interim Decision, and Notices of Dispute Resolution Proceeding for the adjourned hearing,

scheduled for August 8, 2022 at 9:30 am (“Adjourned Hearing”), were served on the parties by the RTB. The Landlord and RS attended the Adjourned Hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing JK stated the Tenants served the Notice of Dispute Resolution Proceeding for the First Application and their evidence (“First NDRP Package”) on the Landlord in-person shortly after the Tenants received it from the Residential Tenancy Branch (“RTB”). The Landlord acknowledged receiving the First NDRP Package. I find the Tenants served the First NDRP Package on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Service of Second Notice of Dispute Resolution Proceeding

At the Original Hearing, RS stated he thought the Tenants served the Second Notice of Dispute Resolution Proceeding and evidence (“Second NDRP Package”) on the Landlord by email. The Landlord denied receiving the Second NDRP Package. RS and JK admitted they could not locate an email for service of the Second NDRP Package.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in

accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

As the Tenants were unable to locate an email sending the Second NDRP Package to the Landlord, and as the Landlord denied receiving the Second NDRP Package from the Tenants by email, I find that, on a balance of probabilities, the Tenants did not serve the Landlord with the Second NDRP Package. As such, the Tenants have not complied with Rule 3.1. Based on the foregoing, I dismiss the Second Application without leave to reapply. Notwithstanding I have dismissed the Second Application, the Landlord nevertheless has the onus of showing, on a balance of probabilities, that there is cause for ending the tenancy pursuant to the 10 Day Notice under section 55 of the Act.

Preliminary Matter – Correction of Rental Address

At the outset of the Original Hearing, I noticed the descriptor of the rental unit was unclear. I asked the parties for clarification and was told that the rental unit consists of three cabins. After a brief discussion, the parties agreed to a request by the Tenants for an amendment to the First Application and Second Application to clarify that the rental unit consists of three cabins.

Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

At the request of the Landlord and Tenants, I order the rental address be amended in the First Application and Second Application be to clarify the rental unit consists of three cabins.

Preliminary Matter – Severance and Dismissal of Tenants' Claim

The First Application includes a claim that the Landlord comply with the Act, Regulations and/or tenancy agreement. Rule 2.3 of the RoP states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the Original Hearing, I advised the parties the primary issue in the Tenants' application was whether the tenancy would continue or end based on whether the 10 Day Notice and 1 Month Notice were cancelled. Accordingly, I find the Tenants' claim for the Landlord to comply with the Act, Regulations and/or tenancy agreement under section 62 is not sufficiently related to the primary issue of whether the 10 Day Notice or 1 Month Notice is upheld or set aside. Based on the above, I sever the Tenants' claim that the Landlord comply, Act, Regulations and/or tenancy agreement. If the tenancy continues, their claims under section 62 will be dismissed with leave to reapply. If the tenancy ends, their claim for an order that the Landlord comply pursuant to section 62 will be dismissed without leave to reapply as the tenancy is over.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 1 Month Notice?
- If the 10 Day Notice and 1 Month Notice are not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

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

The parties agreed the tenancy was made by an oral agreement between JK and the Landlord. The parties agreed the tenancy commenced on June 1, 2022, on a month-to-month basis, with rent of \$1,000.00 payable on the 1st day of each month. The Landlord acknowledged JK paid the Landlord a security deposit of \$500.00. The Landlord stated she was holding the security deposit in trust on behalf of the Tenants. The parties agreed the Landlord gave a Notice of Rent Increase to increase the rent to \$1,015.00 effective on June 1, 2022. The Tenants stated RS was added to the tenancy agreement by an oral agreement with the Landlord commencing in November 2020. Although the Landlord disputed the Tenants' claim that RS was added to the tenancy agreement, the Landlord admitted that she has accepted one-half of the rent each month from RS since November 2020.

The Landlord submitted a copy of the 1 Month Notice into evidence. The Landlord stated she served the 1 Month Notice on the Tenants' door on March 24 17, 2022. The Tenants acknowledged receiving the 1 Month Notice. The 1 Month Notice stated the following causes for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant or a person permitted on the property has caused extraordinary damage to the rental unit, site or property/park

The 1 Month Notice provided details on damage to a kitchen table, glass insert in a wood heater was missing and a badly cracked sink. It also stated the RS had stolen her Landlord's car in February 2022.

The Landlord stated the RS broke the glass on a table she owns with a hammer. The Landlord stated the bathroom sink was badly cracked and the glass insert in a wood burning fireplace was missing. The Landlord alleged RS stole her car but admitted the

car was not located on the residential property rented by the Tenants at the time of the alleged theft. The Landlord admitted she did not conduct a move-in condition inspection with JK at the time she moved into the rental unit because JK was already in the rental unit when JK entered into the oral lease with the Landlord.

The Landlord stated the Tenants have significantly disturbed her. When I asked, the Landlord admitted that, although she lives on an adjoining property, it is not part of the residential property rented by the Tenants. The Landlord stated that, other than for the Tenants, there are no other tenancies on the residential property.

RS acknowledged he broke the glass on the Landlord's table but stated he replaced the table. JK stated the bathroom sink was already cracked when she moved into the rental unit. RS stated the sink is located under a medicine cabinet and the crack spread open with time. RS stated the glass insert for the fireplace broke on its own.

The Landlord admitted she has not gone to the rental unit to determine if the Tenants have replaced the table.

The Landlord stated she served the 10 Day Notice on the Tenants' door on April 7, 24, 2022. The Tenants acknowledged receiving the 10 Day Notice. The 10 Day Notice stated the Tenants had rental arrears of \$500.00 as of April 1, 2022.

JK stated he e-transferred his portion of the rent, being \$500.00, to the Landlord on April 1, 2022. JK stated he received an email dated April 1, 2022 in which the Landlord stated JK was no longer a sub-tenant in the rental unit since he moved out and stole the Landlord's car. JK testified the email stated JK was the tenant and that she needed the Landlord's permission to take on a sub-tenant. JK stated he sent another e-transfer of \$500.00 to the Landlord on April 10, 2022 and the e-transfer was accepted by the Landlord.

The Landlord acknowledged she refused to accept the e-transfer of \$500.00 from JK on April 1, 2022 and acknowledged she accepted the e-transfer of \$500.00 from RS on April 10, 2022.

Analysis

1. Status of RS

The Landlord stated the oral tenancy was only with JK when it commenced on June 1, 2022. Both of the Tenants stated there was an oral agreement between them and the Landlord to add RS to the tenancy agreement. Both of the Tenants stated RS has been e-transferring \$500.00 per month, being one-half of the rent, to the Landlord since November 2020. The Landlord did not deny she has been accepting rent from RS by e-transfer since RS moved into the rental unit. I find, on a balance of probabilities, that RS is a tenant to the tenancy agreement.

2. 1 Month Notice

Subsections 47(1)(d)(i), 47(1)(d)(iii) and 47(1)(f) and sections 47(2) through 47(5) of the Act state:

- 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) [...], or
 - (iii) put the landlord's property at significant risk;
 - [...]
 - (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;
 - [...]
- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

The Landlord stated she served the 1 Month Notice on the Tenants' door on March 24, 2, 2022. Pursuant to section 90 of the Act, I find the Tenants were deemed to have received the 1 Month Notice on March 27, 2022. Pursuant to section 47(4) of the Act, I find the Tenants had until April 5, 2022 to file an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Application was filed by the Tenants on April 3, 2022. As such, I find the Tenants filed the First Application within the 10-day dispute period required by section 47(4) of the Act.

I note that subsections 47(1)(d)(i), 47(1)(d)(iii) and 47(1)(f) use either the adjective "significantly, "significant" or "extraordinarily" as part of the cause stated in those subsections. This means a landlord must prove the activity, behavior or misconduct of the tenant must be sufficient to warrant an eviction of the Tenant.

The Landlord stated the Tenants have significantly disturbed her. The Landlord admitted that she does not live on the residential property and, other than for the tenancy with the Tenants, there are no other tenancies on the residential property. As the Landlord does not live on the residential property, and as the only occupants on the residential property are the Tenants, there can be no violation of section 47(1)(d)(i).

The Landlord alleged RS stole her car but admitted it was not stolen while on the residential property. I note that the Landlord did not indicate on the 2 Month Notice that the RS had engaged in an illegal activity. As such, there is no cause for ending the tenancy related to this incident.

The Landlord stated RS broke the glass on a table she owns with a hammer. RS admitted he broke the table but stated he replaced the table. The Landlord admitted she has not inspected the rental unit to determine if the Tenants have replaced the table. The Landlord stated the bathroom sink was badly cracked and the glass insert in a wood burning fireplace was missing. The Landlord admitted she did not conduct a

move-in condition inspection with JK at the time she moved into the rental unit because JK was already in the rental unit when JK entered into a lease with the Landlord. As such, the Landlord cannot prove whether there was a crack in the sink when the JK took possession of the rental unit. The Landlord stated the glass insert in the wood fireplace was missing. RS stated the glass insert for the fireplace broke on its own. There is no evidence before me that the Tenants deliberately broke or misused the glass insert or, alternatively, whether it shattered on its own from repeated cycles of heat over the years. I find, on, a balance of probabilities, that the Tenants have not put the Landlord's property at significant risk or caused extraordinary damage to the rental unit. As such, I find the Landlord has not proven cause under sections 47(1)(d)(i), 47(1)(d)(iii) and 47(1)(f) of the Act. Based on the foregoing, I order the 1 Month Notice to be cancelled.

3. 10 Day Notice

Sections 46 of the Act states:

- 46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

The Landlord testified the 10 Day Notice was served on the Tenants' door on April 7, 2022. Pursuant to section 90, I find the Tenant was deemed to have received the 10 Day Notice on April 10, 2022. Pursuant to section 46(4), the Tenant had until April 15, 2022, being the next business day after the expiry of the 5-day dispute period, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the Residential Tenancy Branch indicate the Tenants made his application on April 7, 2022. Accordingly, the Tenants made their application to dispute the 10 Day Notice within the 5-day dispute period required by section 46(4) of the Act. However, as noted above, the Tenants did not serve the Second NDRP Package on the Landlord as required by Rule 3.1 of the RoP and I dismissed the Second Application without leave to reapply.

++

The Landlord stated the Tenants had rental arrears of \$500.00 as of April 1, 2022. RS stated he e-transferred his portion of the rent, being \$500.00, to the Landlord on April 1, 2022. RS stated he received an email dated April 1, 2022 from the Landlord in which she stated RS was no longer a sub-tenant in the rental unit since he moved out and stole the Landlord's car. RS stated he sent another e-transfer of \$500.00 to the Landlord on April 10, 2022 and the e-transfer was accepted by the Landlord.

A landlord may not refuse to accept a payment of rent from a Tenant, that has been made in the customary manner that the rent has been previously paid by the tenant to the landlord, and then serve the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities under section 46 on the basis that the tenant has not paid the rent when due, or within the 5-day dispute period after the Ten Day Notice is deemed to have been received by the Tenant. In this case, the Landlord acknowledged she received e-transfers of \$500.00 from RS on a monthly basis. As such, payment of one-half of the rent by RS was the customary method of payment of one-half of the rent by RS. The Landlord acknowledged JK paid the other one-half of the rent of \$500.00 for the April 2022 but she refused to accept the \$500.00 e-transfer from RS on April 1, 2022. Based on the foregoing, I find that the 10 Day Notice was not issued for a valid reason. As such, I order the 10 Day Notice to be cancelled.

As I have ordered that both the 10 Day Notice and 1 Month Notice be cancelled, the tenancy continues until ended in accordance with the provisions of the Act.

The Tenants' claim for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement is dismissed with leave to reapply.

Conclusion

The 10 Day Notice and 1 Month Notice are cancelled. The tenancy continues until ended in accordance with the provisions of the Act.

The Tenants' claim for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement is dismissed with leave to reapply.

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 13, 2022

Residential Tenancy Branch