



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Tenants seek an order pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”) cancelling a One-Month Notice to End Tenancy signed on April 14, 2022 (the “One-Month Notice”).

S.S. appeared as the Tenant. T.B. appeared as the Tenants’ advocate. L.M. appeared as counsel for the Landlord. J.W. appeared as the Landlord’s agent. R.M. was called as a witness by the Landlord.

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 parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord 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 Tenants took occupancy of the rental unit on July 1, 1982.
- Rent is currently due in the amount of \$1,015.12 on the first day of each month.
- The Landlord holds a security deposit of \$190.00 in trust for the Tenants.

A copy of the tenancy agreement was put into evidence by the parties.

Landlord's counsel advised that the One-Month Notice was personally served on the Tenant on April 14, 2022. The Tenant acknowledged receiving the One-Month Notice on April 14, 2022. A copy of the One-Month Notice was put into evidence by the parties.

Landlord's counsel described the Tenants' rental unit as being grossly unclean. The Landlord's agent, J.W., described the rental unit as a 9 or 10 out of 10 in terms of uncleanliness. The Landlord's evidence includes photographs of the interior of the rental unit. The Tenants' advocate argued that the photographs were taken without the Tenants informed consent.

Landlord's counsel argued that the level of uncleanliness has precipitated a severe mouse infestation within the Tenants' rental unit. The Landlord's evidence includes various reports and invoices from a pest control company. I was directed to a letter from the pest control company dated April 13, 2022 in the Landlord's evidence, which describes the opinion of the pest control technician following an inspection of the Tenants' rental unit on April 11, 2022.

The April 13, 2022 letter from the pest control technician describes mouse droppings throughout the apartment and "especially in the dining room and kitchen area". It was their opinion that there was high level of mouse activity that was likely current and historical. The report recommended cleaning and decluttering as well as sealing gaps around heating pipes and along the floor.

The Landlord's agent advised that there had been increased mouse activity for the past year and that there had been complaints from adjacent rental units, though none from

the Tenants. I was advised by the agent that the Landlord undertook a systematic exclusion treatment with the pest control company. The Landlord's representative argued that the Tenants have not been cooperative in addressing the mice issue within their rental unit.

The Tenant denies there is a mouse infestation and claims that she has only seen a mouse on one occasion. The Tenant's advocate did not deny that the rental unit was unclean. However, I was told that the advocate has arranged for a community support worker to attend the rental unit recently. It was the opinion of the community support worker who attended the rental unit that it was not the worse they had seen and that a community support organization could assist in cleaning and decluttering the space. It does not appear that the support organization has cleaned the rental unit.

Landlord's counsel further advised me of an incident on April 13, 2022 in which J.S. was drinking and smoking in front of the residential property when he stepped off behind a shrub along the building to urinate. The location in which J.S. urinated was said to be in front of the laundry room window and another tenant and her daughter witnessed J.S. urinating along the building. The Landlord's evidence includes video, which shows an individual appearing to urinate behind a shrub along the building.

The Tenants' advocate did not deny the incident of April 13, 2022. However, it was argued that there was a level of urgency in the Tenant's need to urinate such that he was faced with the choice of either urinating along the building or on the carpet in the building as J.S. did not believe he could make it to his rental unit in time. The Tenants' advocate argued that the Tenant chose the lesser of two evils.

The Landlord's agent testified that the Landlord had lost tenants due to mice within the building and due to the Tenants smoking on the balcony. The Tenant's advocate emphasized there were no restrictions on smoking within the rental unit as per the tenancy agreement and that the Tenant J.S. has voluntarily agreed to smoke in front of the building rather than in the rental unit or on the balcony.

Analysis

The Tenants apply to cancel the One-Month Notice.

The Landlord advised that the One-Month Notice was personally served on April 14, 2022, which was acknowledged by the Tenant. I find that the One-Month Notice was personally served on the Tenants on April 14, 2022 in accordance with s. 88 of the *Act*.

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).

Pursuant to s. 47, a landlord may end a tenancy for cause after issuing notice effective no earlier than one month after it is received by the tenant and the day before rent is due as per the tenancy agreement. Presently, the One-Month Notice was issued under ss. 47(1)(d) and 47(1)(f).

Under s. 47(4) of the *Act* a tenant may dispute a one-month notice by filing an application within 10 days of receiving the notice. Indeed, this requirement is made clear at the top of the standard form one-month notices, which states:

HOW TO DISPUTE THIS NOTICE

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Rule 2.6 of the Rules of Procedure is clear that an application is made when both the application is submitted and either the fee is paid or the fee waiver is submitted. Though the Tenant submitted their application on April 22, 2022, they filed their fee waiver on April 26, 2022. Given the circumstances and in consideration of Rule 2.6, I find that the Tenants filed their application to dispute the One-Month Notice on April 26, 2022.

As the Tenant acknowledged receipt of the One-Month Notice on April 14, 2022, I find that the Tenants failed to file their application to dispute the One-Month Notice within the 10 days permitted to them under s. 47(4) of the *Act*. Accordingly, I find that s. 47(5) of the *Act* applies such that the Tenants are conclusively presumed to have accepted the end of the tenancy and ought to have vacated on the effective date set out in the notice.

As the conclusive presumption applies and the Tenants did not file for more time to dispute the notice under s. 66 of the *Act*, I dismiss their application to cancel the One-Month Notice.

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. As that has occurred here, I find that the Landlord is entitled to an order of possession. Given that there is no suggestion that August rent has not been paid, I make the order of possession effective on August 31, 2022.

To be clear, even had the conclusive presumption not applied, I would have found that the One-Month Notice was enforceable. I have reviewed the Landlords evidence and place significant weight in the opinion of the pest control technician in their letter dated April 13, 2022. It is clear based on the opinion and the Landlord's other evidence that mice are frequenting the rental unit.

The Tenants have an obligation to keep their rental unit reasonably clean under s. 32(2) of the *Act*. The Tenant's advocate all but admitted that to the state of the rental unit. It is cold comfort when all that can be said is that a community worker who went to the rental unit was of the opinion that it is not the worse they had seen.

The fact that the Tenant at the hearing insisted that she has only seen a mouse on one occasion underlines that the Tenants are likely not cooperating to the extent necessary to address the rodent infestation. Rodents in the rental unit has a knock-on effect for the other occupants at the building, all of whom have the reasonable expectation to live in a rodent free space.

Had the conclusive presumption not applied, I would have found that the Tenants' failure to keep their rental unit reasonably clean, which has directly contributed to the rodent infestation within the residential property. The persistent rodent problem constitutes an unreasonable disturbance to the other occupants, seriously jeopardizes the health and safety of the other occupants, and puts the Landlord's property at significant risk.

Conclusion

I dismiss the Tenants application to cancel the One-Month Notice.

The Landlord is entitled to an order of possession under s. 55(1) of the *Act*. I order that the Tenants provide vacant possession of the rental unit by no later than **1:00 PM on August 31, 2022**.

It is the Landlord's obligation to serve the order of possession on the Tenants. If the Tenant does not comply with the order of possession, it may be filed by the Landlord 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: August 25, 2022

Residential Tenancy Branch