



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEITHAL CONSTRUCTION CO.LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT

Introduction

This hearing convened by teleconference on July 19, 2022, to deal with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord, and an order extending the time to file an application disputing the Notice issued by the landlord.

The tenant's advocate, the tenant's outreach worker, the tenant's witness/brother and the landlord's agent (landlord), attended the first hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 23 minutes, at which time the hearing was adjourned due to the hospitalization of the tenant. An Interim Decision was issued on July 19, 2022, which is incorporated by reference and should be read in conjunction with this Decision. The tenant's request for an order extending the time to file an application disputing the Notice issued by the landlord was granted.

At the reconvened hearing, the tenant, a different tenant's advocate, the tenant's support worker, the tenant's witness/brother and the landlord attended. The current tenant's advocate was affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. At the reconvened hearing, no parties raised concerns with service of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice to end the tenancy?

Should the Notice be cancelled or enforced?

Background and Evidence

The tenancy began on October 1, 1999, for a monthly rent of \$700 and a current monthly rent of \$1,300. Both parties filed a copy of the written tenancy agreement.

The rental unit is located in a multi-unit apartment building.

In accordance with the Rules, the landlord proceeded first to prove the causes listed on the Notice.

The Notice was dated March 15, 2022, for an effective move out date of April 30, 2022. The tenant confirmed receiving the Notice on March 15, 2022.

The causes listed on the Notice, filed in evidence by both parties, alleged that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk, and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Causes portion of the Notice, the landlord wrote:

Details of the Event(s):

PEST CONTROL WAS TO INSPECT UNIT ON FEB 17TH FOR MICE BUT COULD NOT DUE TO CLUTTER. TENANT WAS GIVEN UNTIL MAR 3RD/22 TO DECLUTTER AND ALLOW FOR BETTER ACCESS. TRADES COULD ALSO NOT ENTER AND PATCH UP ANY HOLES ON FEB 22ND, 2022 DUE TO CLUTTER. MAR 7TH/22 PEST CONTROL COULD ONLY ACCESS ONE CORNER OF UNIT AND TENANT ASKED EVERYONE TO LEAVE APARTMENT AND WAS NOT WILLING TO MOVE ANY FURNITURE OR DECLUTTER. AFTER REPEATED ATTEMPTS AT RESOLVING ISSUE WITH TENANT'S BROTHER AND MPA LIAISON, TENANT REFUSES TO CLEAN UP UNIT AND ALLOW LANDLORD TO TREAT UNIT. PEST CONTROL HAS TREATED FLOORS 1-4 AND BELIEVES THAT MICE ARE ENTERING FROM 104. UNABLE TO PROPERLY ASSESS SCOPE OF SITUATION DUE TO TENANT'S REFUSAL TO COOPERATE. LANDLORD HAS ACQUIRED EXTRA COSTS OF PEST CONTROL NEEDING TO COME MULTIPLE TIMES, AS WELL AS MICE TRAVELLING UP BUILDING THROUGH MULTIPLE FLOORS. TENANT ALSO NOTED THAT MOUSE WAS SEEN OVER A MONTH AGO AND DID NOT INFORM LANDLORD.

[Reproduced as written]

In summary and relevant part, the landlord submitted that the rental unit was too cluttered for a proper inspection by the pest control company when mice were being reported around the residential property by other tenants. The landlord said that they have a pest control company inspect the residential property once a month, but when the company was trying to locate the source of the mice or to close access/entry points, they were unable to inspect the tenant's rental unit. The landlord said that they had tradesmen come in and close up possible holes/gaps in all suites to "further quell any possible mice entry, yet were unable to complete the work" in the rental unit. The landlord submitted that she was unable to open the front door and bedroom door more than 2-3' due to the pallets and shelving on the floor and the rental unit was difficult to access.

The landlord said that the tenant was issued many warnings about cleaning his rental unit in order to allow the inspections and work due to the tenant's clutter and belongings against the wall. Despite the written warnings, the tenant failed to comply.

The landlord said it was necessary to issue the 1 Month Notice to the tenant due to the many complaints from other tenants about mice in their rental units.

The landlord said that the tenant breached a material term of the tenancy agreement by failing to maintain ordinary, health, cleanliness, and sanitary standards in his rental unit and by failing to correct the situation after written warnings.

In response to my inquiry, the landlord submitted that since the 1 Month Notice was issued, she had not had the same issues with the mice and as far as she knows, the rental unit has been cleaned. The landlord submitted that the situation improved when the tenant was hospitalized. The landlord asserted that there was nothing personal with

the tenant and that he is nice to other tenants, but that she had to look out for all her other tenants in the building and keep the residential property pest free.

The landlord said that if the tenant is not evicted, she may have mice issues again, especially when the weather starts cooling off. The landlord submitted that she was not sure if the tenant could maintain the current state of his rental unit.

Evidence filed by the landlord included the pest control company reports, complaint letters/emails from other tenants, written notices to the tenant and photographs of the interior of the rental unit prior to issuing the 1 Month Notice.

Tenant's responses –

In a letter of submission, which the tenant signed, he said he understands there may be more frequent inspections of the rental unit by the landlord and is willing to cooperate with access. The tenant signed that he understands it is necessary to get help from all supports and that he has an increased level of support. The tenant wrote that he is taking responsibility for managing his mental health by doing things such as receiving his medication from a pharmacy for a “witnessed daily dispense, doing some activities in the community and limiting stress”. The tenant wrote that he is dedicated to not accumulating more items for his apartment. The tenant said in the letter that he has a tough time sometimes with his limited understanding of English, but will request support from an interpreter in the future.

JH, an outreach worker, states that the tenant is now connected with two outreach workers who are in charge of overseeing him, and two brothers who can all now assist in keeping the rental unit clean and un-cluttered. JH asserted that the tenant would be challenged to find other housing and is on a list for supported, or assisted housing, but will not likely be able to access that for 3-4 years.

JH asserts that the rental unit is now clean and uncluttered and that the tenant is keeping to his treatment plan for regular check-ins and injections.

The tenant's witness, RK, said he and another brother used to visit the tenant more frequently, but stopped because of Covid, and did not know the rental unit had gotten in such a bad state. RK and the other brother cleaned and de-cluttered the rental unit and removed 80% of the tenant's belongings, asserting the rental unit is now in a very

livable condition. RK wanted to assure the landlord that they would keep monitoring the tenant to make sure these issues do not come up again.

In rebuttal, the landlord submitted that there was only an improvement in the rental unit during the tenant's periods of hospitalizations.

Analysis

Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 47 of the Act permits a landlord to seek termination of a tenancy by issuing a One Month Notice for a variety of causes. In this case, the landlord alleged that the seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk, and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Upon review of the 1 Month Notice to End Tenancy dated March 15, 2022, I find that Notice to be completed in accordance with the requirements of section 52 of the Act.

After reviewing the evidence, I find the landlord had sufficient reason to end the tenancy when they issued the 1 Month Notice to the tenant on March 15, 2022. I find most concerning was the undisputed fact that the tenant had pallets and shelving on many areas of the floor, which prevented full access to or exit from the rental unit for any possible emergency situations, such as a fire in the rental unit or residential property. I find this could put the landlord's property at significant risk and seriously jeopardize the safety of other tenants.

I also find that the landlord is required to ensure the quiet enjoyment of all tenants of the residential property, and I find it reasonable to conclude that a mice infestation in their

home could impact the other tenants' right to quiet enjoyment. When the landlord began receiving complaints from other tenants, I find the landlord was required to investigate and remedy the issue, which meant having the pest control company and tradesmen attend to cure the problem.

The evidence shows that the tenant failed to cooperate in readying his rental unit for the treatment and inspection, despite the written requests from the landlord. The evidence shows that the pest control company and tradesmen could not properly access the rental unit due to the door being blocked by pallets and shelving, and the amount of furniture and belongings against the walls. Due to this, I find the landlord was compelled to issue the tenant a 1 Month Notice, to ensure the other tenants have their right to have their rental unit free from mice or other pests.

Despite this finding, as set out in *Senft v. Society For Christian Care of the Elderly*, 2022 BCSC 744, the Court suggests that I must consider the post-Notice conduct of the tenant. In other words, in this case, I must consider the current state of the rental unit, as *"post-notice conduct is relevant when deciding whether an end to the tenancy was justified or necessary in the context of the protective purposes of the RTB"*.

In this case, the landlord acknowledged that they have not had any subsequent issues with the mice in the rental unit. This was shown to be due to the tenant's absence from the rental unit due to hospitalizations and the tenants' brothers removing a large number of personal property from the rental unit. As well, the tenant is now under the care and supervision of two outreach workers who are well aware of the issues of this dispute, raised in the 1 Month Notice. JH assured in the hearing the tenant was diligent now in his treatment program.

Taking all this into consideration, I find I must cancel the 1 Month Notice dated March 15, 2022, due to the post-Notice conduct of the tenant. For this reason, I grant the tenant's application and I order the March 15, 2022, 1 Month Notice is cancelled, and of no force or effect. The tenancy continues until it may otherwise end under the Act.

Orders for the tenant –

Although I have cancelled the Notice in this case, due to my findings herein, I find the evidence shows the landlord had reasons to seek an end to the tenancy due to the tenant's failure to cooperate in having his rental unit ready for inspection and treatment for the mice infestation.

For this reason, I **ORDER** the tenant to comply with his legal obligations under the Act, more specifically, that he must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. I also **ORDER** the tenant to cooperate with any possible future inspection requests, upon the landlord's proper notices for such entries into the rental unit and have his rental unit ready for inspection and treatment.

The tenant is advised that the landlord is entitled to make monthly inspections of the rental unit in order to ensure the tenant is complying with these orders.

The tenant is now informed that should he fail to comply with these orders, the landlord may issue the tenant another 1 Month Notice and if they choose, the landlord may use this Decision as support for their Notice.

Conclusion

I grant the tenant's application and I ordered the 1 Month Notice cancelled and is now no force or effect. The tenancy continues until it may otherwise end under the Act.

The tenant has been issued orders.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 14, 2022

Residential Tenancy Branch