Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, RP, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlords make repairs to the rental unit pursuant to section 32;
- the cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $3,800 pursuant to section 67.

The tenant attended the hearing. The landlords were represented at the hearing by landlord SM, the residence manager. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue - Service

The tenant testified that she served the landlords with her notice of dispute resolution package and supporting evidence. She uploaded 335 unique documents to the Residential Tenancy Branch (the "**RTB**") evidence portal. SM acknowledge receipt of the tenant's documents.

SM testified, and the tenant confirmed, that the landlords served the tenant with their documentary evidence package, which consists of 426 unique documents.

I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Name of Corporate Landlord

The parties agreed that the tenant incorrectly named the corporate landlord by including the first name of the owner of corporate landlord (the "**owner**") in parentheses. By consent of the parties, I order that the name of the corporate landlord on this application is amended to remove the first name of the owner in parentheses.

Preliminary Issue – Severing of Issues

RTB Rule of Procedure 2.3 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.

At the hearing, I was uncertain if all the issues in the tenant's application were related, as one of the reasons the landlord issued the Notice was due to excessive communications from the tenant, and the tenant stated that much of the communication related to requests for repairs. As such, I did not sever all parts of the tenant's application from her request that the Notice be cancelled. I advised the parties that the hearing would deal with the validity of the Notice only, and then I would adjourn the proceeding to decide that issue and determine if the hearing needed to be reconvened to address the other issues.

However, after having reviewed the *voluminous* evidentiary record, I find that it is not necessary to reconvene the hearing, as (for the reasons set out below) even if the rental unit was in need of repairs, the nature of the communications was such that the issuing of the Notice was warranted. Accordingly, I do not find it necessary to determine whether the repairs were required in order to assess the validity of the Notice. I explicitly make no findings on that point.

I find that the claims in the tenant's application are not so related as to require being heard together. Accordingly, I dismiss all parts of the tenant's application, except her application to cancel the Notice *with* leave to reapply.

The balance of this decision will relate to the issue of the validity of the Notice.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is an apartment in multi-unit building built in 1952. The tenant and the corporate landlord ("**VHL**") entered into a written, fixed term tenancy agreement starting

November 15, 2021 and ending May 31, 2022. Monthly rent was $1,900 plus utilities. This amount included furnishings. The tenant paid VHL a security deposit of $950 and a pet damage deposit of $950.

However, on December 15, 2021, the tenant and VHL entered into a new written tenancy agreement for fixed term starting January 1, 2022 and ending June 31, 2022. The rent was reduced to $1,800 plus utilities. The tenancy agreement indicates that the security deposit and pet damage deposit was reduced to $900 each, which VHL holds in trust for the tenant. The parties did not give evidence as to what happened to the balance of each of these deposits which the tenant previously paid to VHL.

SM testified that the rent was reduced as compensation for the tenant having to reside in an apartment with an off-putting smell and the possible presence of mold. The tenant denied that the rent reduction was granted to due to the smell or for mold.

SM testified that the tenant has send him an unreasonable amount of correspondence relating to all manner of topics before and during the tenancy. He testified that prior to the start of the tenancy, she emailed him over a dozen times.

Within the first month of the tenancy, the tenant repeatedly complained of the condition of the rental unit. These complaints related to alleged deficiencies in the rental unit, and also to the fact she believed that the rental unit was not worth $1,900 per month. She asserted that this was above market rate and believed the rent should be lowered. SM testified that the landlord capitulated to these requests and that this was reason the parties entered into a new tenancy agreement on December 15, 2021.

The parties each submitted hundreds of pages (over 200 submitted by the tenant and over 300 by the landlord) of text message correspondence exchanged between the tenant and SM during the course of the tenancy. I have reviewed these documents and will not recount the full amount of their contents, but summarize them below.

In the text message exchanges, the tenant complains that the landlord has given her the incorrect layer of a carbon paper receipt for cash payments. She repeatedly and frequently asserts that the rent is too high and that the hydro bill (which she is responsible for paying BC Hydro directly) is too high. She shared her opinion of perspective tenants with SM. She states that there is mold in bathroom closet of the rental unit and that the window is leaking. She demanded that the landlord remove the bedframe from the (furnished) rental unit (which she then says she attempted to take apart and may have damaged in the process). She asked to install a mirror in the common area of the building and then challenged SM when he refused for safety reasons (calling his reasoning “silly”). She asked for funds to be reimbursed to her for a garden that she planted on the building’s common property. She insinuated that the landlord stole some of the plants in this garden. The tenant repeatedly calls SM’s professionalism into question (I note that all of SM’s responses to the tenant’s text messages appear to be straightforward, polite, and conciliatory).

On one occasion, SM offered to meet with the tenant to address her complaints, but she refused.

On February 12, 2022, SM texted the tenant and asked that she cease texting him about repairs and instead put them in writing. He wrote:

> [Tenant], please submit in writing with detail what issues you are experiencing so that there can be no question as to what needs to be addressed. I will present this to [the owner] so he knows exactly what is needed.
>
> As for your reoccurring complaint about the rent, we have already accommodated that. You are already paying $1800 in an apartment that usually runs for $2000.
>
> Again, not meant as a threat of eviction but, I offered that if you do not like the apartment feel free to look for another place. Provided that you give proper one months notice and do not impede the viewing slash rental process the deposit will be returned. You have seen it happen with [two other occupants of the residential property]; They moved out early and got their deposit back no problems and all were happy.

The tenant replied:

> I did not read your entire text you just saw that not a threat and didn't read. Yes you have told me many times if I'm not happy here I can move. That's a very unprofessional attitude and I have asked you many times to stop. Or [SM] I can also call health inspectors and go to tenancy board to complain and get rent reduction until problem fixed.
>
> You don't just get to charge outrageous rents for apartments with issues and then tell person to move if they don't like it
>
> Why did [the owner] even bother coming here today it's ridiculous and i have been very patient and reasonable waiting for things to get done in here
>
> [as written]

Later, she wrote: “I will also continue to communicate via text mas we have done. Its easier for to have proof of discussions as I don’t have a printer.”

I note that after receiving the SM’s request for written notice of repairs, the tenant provided *some* communication via handwritten letters. However, these letters *supplemented* her text message communication with the SM, rather than replaced it.

SM submitted a lengthy written statement into evidence. At the hearing, he adopted this statement and affirmed its truth. In it he wrote:

> [The tenant] has been a non-participant in the resolution of her issues and at points has actively exasperated if not been the cause of them. She has made issue over minor cosmetic imperfections and things that were not even an issue. She has refused to communicate in a way that I stated I wanted. Her communication style in text is excessive and abusive. She has leveled accusations of malfeasance and cover up against me. Since I gave the eviction notice she has become convinced that there is asbestos in the building. She has removed floorboards, baseboards, popcorn ceiling, and made holes in the closet and ceiling. She has taken actions to interfere with building operations. I have come to believe that [the tenant] entered the lease in bad faith.
>
> Early on, almost from the beginning, [the tenant] had started voicing complaints, opinions on other prospective tenants, opinions on how things ought to be done, and how she wasn't satisfied with this or that. When this started, I remember reminding her that this is not a luxury apartment and that the building is not at all perfect and there were things to be mindful of. Rather early on in our relationship I gave her the option of breaking the lease and finding another place to live if she wasn't happy here. Whenever she would make comment about the high rent or getting ripped off with rent I would reiterate the offer to allow her to find happiness someplace else. This happened a lot. I tried to make things easier, better for her, but my efforts were in vain.
>
> […]
>
> Her complaints and comments were constant. The building is ugly, rent was too high, the washing machine was disgusting, rent was too high, her clothes were too wet coming out of the washer, rent was too high, the side of the building needed a garden to make it not ugly, rent was too high, that woman's dogs are not friendly I wouldn't rent to her, bathroom mirror is scratched and did I mention the rent was too high? Because she did at almost every turn. It was relentless. The tone and words of her emails were hostile, critical, and just unpleasant. She would text me rather early and rather late. I know I live in the building, but I am not a 24/7 concierge.

SM testified that the landlords attempted to address the tenant's complaints about mold in the rental unit bathroom. The owner attended the rental unit on one occasion to inspect and make the necessary repairs.

In his written statement, SM wrote:

> I had first been informed of the bedroom mold issue about a month after she had been in the apartment. When I went over to check it out the only thing that I could

> smell was the pets. I could not smell what she was smelling. I'm not at all claiming that it was not there only that I could not smell it. She had said that it smelled like the basement. I can smell that old building basement must just fine though. Everyone that comes here is aware it is an older wooden building. Inherent to that fact and this climate is that humidity will make mold an issue if nothing is done. As far as I can tell and as far as I have been told this bedroom was getting no air circulation. The door had remained closed, and the windows had remained closed. A dark, enclosed, moist space with no circulation is perfect breeding grounds for mold to become an issue. It is greatly unreasonable to foster an environment that will produce mold and then take issue with the mold that results.
>
> Regardless I made efforts to deal with or eliminate the smell. We started with an odour absorbing puck. I bought a few options and let her pick. This did not work to her liking. Next we discussed cleaning sprays I bought a few of the mold/mildew and odour cleaning sprays. I offered to do it but she said she would do it herself, I ended up assisting to get the higher areas. These apparently did not work either. I then suggested that we do a wash with bleach just to kill anything that was there. I offered to pay her to do that wash but the idea was refused because she did not want that smell of a clean disinfected room. Throughout this process I had offered a dehumidifier and an air purifier both of which were refused. We were set to do one last thing, painting the room with an odour, mold, and mildew blocking paint.

The owner's visit to the rental unit did not resolve adequately address the issue to the tenant's satisfaction. There was a confrontation between the owner and the tenant, and then between SM and the tenant. The owner stated that he wanted the tenant evicted.

On March 31, 2022, SM served the tenant with the Notice personally. It specified the reason for ending the tenancy as:

1) The tenant has allowed an unreasonable number of occupants in the unit;
2) The tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. At the hearing, SM stated that the additional occupants of the rental unit had since vacated, and the landlord no longer seeks to enforce the notice on this ground.

The Notice described the disturbance to the landlord as follows:

> Excessive use of text including demands for immediate service, threats of inspectors and tenancy breach, vandalism and theft, accusations of threats, abuse and malfeasance, and more period from 290 pages of text exchanges I have taken notes from November 3, 2022 [sic] to only March 11, 2022 attached there is more beyond this but I think my reasoning is evident in this. There was a refusal on the tenant's part to provide written requests for service and instead

continued to use text. This may not have been a problem if there was not so much additional communication.

At the hearing, SM testified that the volume of text messages he received from the tenant was so great that the sound his phone made when and text message was received caused him stress and tension.

The tenant did not deny that she sent this volume of text messages to SM. Rather, she argued that the volume was justified because of the condition of the rental unit and the landlord's failure to remediate it. She accused the landlords of evicting her in order not to make the repairs they are required to under the Act.

Analysis

Section 47 of the Act sets out the basis that a landlord may end a tenancy for cause. It states:

> **Landlord's notice: cause**
> 47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> […]
> (c) there are an unreasonable number of occupants in a rental unit;
> (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,

Section 1 of the Act defines landlord:

> "landlord", in relation to a rental unit, includes any of the following:
>
> (a)the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
> (i) permits occupation of the rental unit under a tenancy agreement, or
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I find that SM meets this definition, and is a "landlord" for the purposes of this application, as he is the owner's agent who exercises power and performs duties under the Act. Accordingly, if the tenant is found to have unreasonably disturbed SM, this could be a ground to end the tenancy.

The amount of correspondence the tenant sent SM is excessive. The purpose of *some* of the communication is valid (reporting the possibility of mold in the rental unit, for

example). However, the *manner* of much of the communication relating to this topic is unreasonable.

The tenant repeatedly and unnecessarily made demands for the same repairs to be made, and made unfounded allegations as to SM's professionalism when the landlords' efforts to address the repairs did not meet her expectation regarding timeliness or adequacy. A landlord must act reasonably when addressing requests for repairs. Sometimes this means a landlord will not be able to act immediately. Other times this may mean the landlord will take an incremental approach to the repairs, to see if less costly options will suffice. In some circumstances, it may not be reasonable for a landlord to take immediate, extensive steps to address a request for repairs.

The tenants' expectations set out in the correspondence regarding many of her requests for repair were unreasonable. I do not find that SM was unreasonable to ask the tenant to cease communicating requests for repair via text message and instead communicate "in writing" (that is, by written letters). In light of the volume of text messages received, such a request would have had the effect of limiting the amount of unnecessary communication from the tenant, and (hopefully) cause the tenant to clarify and focus her requests.

The tenant's response to this request (that she would continue to send text messages because it was more convenient to her) was not reasonable. I acknowledge that the tenant did start providing written letters to SM as well. However, as they were sent in addition to the text messages, rather than instead off, I find that they compounded the issue SM faced, rather than ameliorated it.

In addition to the tenant's communication which was valid in its substance but not in form, was the tenant's constant communication not related to the enforcement of her rights under the tenancy agreement or Act (such as the repeated demands for a rent reduction due to the unit allegedly being priced above market rate, the demands to remove furniture from the rental unit, and the sharing of her opinions about prospective tenants). Such communication in both substance and volume was unreasonable: the parties agreed to a monthly rate when the tenancy began and signed a contract. Absent an order from the RTB, the tenant is obligated to pay that amount, even if she things she is overpaying; The parties agreed that the rental unit would be furnished. Furniture was provided. This does not mean that the tenant is entitled to have pieces of furniture removed that are not to her liking (just as she could not demand that the walls be repainted a different color to suit her tastes). Finally, the Act does not provide a tenant any right to have input over whom a landlord may rent other units on the residential property to.

I accept SM's testimony that the tenant's constant communication caused him stress and anxiety.

In totality, I find that the tenant's voluminous communication with SM amounts to an unreasonable disturbance to SM.

I note that the situation of the tenant was not one where the tenant is being punished for being the proverbial "squeaky wheel getting the grease". If the tenant's communication was solely restricted to demands for repairs, this *possibly* could be the case (although even then, the tone of the text messages, the refusal to communicate in the requested manner, and the unnecessary critiques of SM's professionalism may cause the communication to amount to an unreasonable disturbance). However, this communication was accompanied by a large amount of communication which I have found to be unreasonable both in quantity and subject matter.

The combination of the communication of communication for a reasonable purpose but in an unreasonable manner with the communication for an unreasonable purpose in an unreasonable manner brings the tenant out of "squeaky wheel" territory and into "unreasonable disturber" territory.

Accordingly, I find that the Notice was issued for a valid reason.

I have reviewed the Notice and find that it meets the form and content requirements of section 52 of the Act.

As such, I find that the Notice is valid and I dismiss the tenant's application to cancel it.

Section 55(1) of the Act states:

> **Order of possession for the landlord**
> 55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
> (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application to cancel the Notice, and as the Notice complies with section 52 of the Act, I grant the landlords an order of possession effective 14 days after the landlords serve it on the tenant.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords within 14 days of being served with a copy of this decision and attached order(s) by the landlords.

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: September 16, 2022

Residential Tenancy Branch