



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended with the agent KF who is the property manager (“the landlord”). The landlord called KF to provide affirmed testimony. The tenant attended. Both parties were provided the opportunity to present evidence and to make submissions. The hearing process was explained.

1. Preliminary Issue – Late Evidence

At the outset, the tenant objected to one item of the landlord’s evidence, the letter dated August 25, 2022 from RP, the previous manager. The landlord acknowledged the letter was served on the tenant five days before the hearing. The tenant stated he did not have time to investigate and reply to the letter.

Rule 3.17 addresses evidence not submitted at the time of the Application for Dispute Resolution:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

The Rules of Procedure state that late submitted evidence may be considered depending on whether the presenting party can show the evidence is “new and relevant” and it was not available when they submitted their evidence:

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment]. hearing begins] and Rule 7.9 [Criteria for granting an adjournment].

Both parties were heard on the issue. The landlord testified that RP, the author of the letter, lives in the same building as the tenant and was the building manager until March 2022. He said he was unable to get the letter earlier although the reason for the delay was unexplained.

The tenant objected to the letter being admitted and testified he did not have time to investigate or respond to the contents before the hearing.

Based on the landlord's testimony, I find the information in the letter was not "new and relevant" as it was available or could have been available when the landlord submitted their evidence on the Application for Dispute Resolution. I also find late acceptance would be prejudicial to the tenant's right to reply in the short time before the hearing.

I therefore decide not to accept the evidence being the letter from RP, the previous manager, and will not consider it in my Decision.

2. Preliminary Issue – Service

The tenant acknowledged service of the remainder of the landlord's evidence. The landlord acknowledged service of the tenant's documents.

I find each party served the other in compliance with the Act except for the excluded letter of August 25, 2022, from RP.

3. Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord.

Section 55 states:

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.

4. Preliminary Issue - Burden of Proof

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 Notice.

Residential Tenancy Branch Rules of Procedure - Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is the Applicant, the landlord presented their evidence first.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this Decision I will only address the facts and evidence which underpin my findings. I will only summarize and address matters which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full,

Background of Tenancy

The parties agreed on the background of the tenancy as follows.

A copy of the tenancy agreement was submitted. The monthly tenancy began on August 1, 2006. Rent is \$784.20 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit and pet deposit each in the amount of \$275.00 which the landlord holds.

The Addendum to the agreement allows the landlord the right to inspect every 4-6 weeks. The landlord testified the unit is an apartment in a 4-plex and is on one floor.

The parties agreed that no inspections had taken place except for the inspection of July 2022 which will be addressed later.

Landlord's One Month Notice

The parties agreed the landlord issued a One Month Notice dated July 8, 2022, with an effective move-out date of August 31, 2022. The tenant acknowledged service.

The reason for the issuance of the Notice were:

Tenant or a person permitted on the property by the tenant has:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord. put the landlord's property at significant risk.
- put the landlord's property at significant risk

In the "Details" section of the Notice, the landlord wrote that they inspected the unit on 48-hour notice on July 7, 2022.

"We found that the suite has a huge amount of clutter, unclean and mold in several areas and needs to be vacated as soon as possible as it is not healthy or safe. I need to protect the property and the other tenants".

The tenant applied to dispute the Notice on July 15, 2022, within the allowed time.

Tenant's History of Requests for Repairs

The main thrust of the tenant's argument is that the landlord is responsible for the conditions in the unit about which he complained due to lack of routine maintenance and repairs. While the tenant acknowledged some repairs were carried out during the tenancy. most of his requests were ignored or inefficiently addressed. This has led to the current situation where the unit requires a lot of repairs and maintenance work. The tenant also claimed that since the issuance of the Notice, he has remedied everything he can do. That is, he has tidied the unit, disposed of boxes and removed clutter. He submitted supporting recent photographs showing a tidy and organized apartment.

The tenant's claims are now addressed in greater detail.

The tenant asserted that the landlord has complained in the Notice about conditions in the unit that he, the tenant, has repeatedly asked to be fixed. The tenant claimed the landlord has ignored normal maintenance requests for the duration of the tenancy. For example, he stated that the carpet in the unit was well used when he moved in 16 years ago and the landlord/property manager at that time promised to replace it. Also, the original blinds are brittle and old and have broken from normal use. As well, there is water damage ignored by the landlord leading to mould.

The tenant described the history of requests for repairs in his written submissions:

- During the course of our tenancy various repair issues have come up as one would expect over such a duration. In nearly all cases it was a struggle to have them addressed, and many have not been completed to this day. Managers leave and new ones arrive, and we are required to start from scratch every time that happens, with no assurance that any of our requests will be passed along to the new management.
- When we first moved in in 2006 we were told that the carpet had not been cleaned as they were moving quickly to ready the suite for us and because the carpet was going to be replaced. The property was ultimately sold and the carpet was never replaced.
- On four occasions other suites in the building had kitchen drain issues that the building manager at the time (Renata) plunged, causing gray water flooding out of our kitchen sink, which completely soaked our kitchen counters and kitchen floor. The manager helped us clean up the first occurrence but would not help us with the other three, and while we did our best we were not capable of properly clearing all of the flood water, leading to mould forming on the back of our sink, which we have been unable to remove on our own.
- Our bathtub was not draining properly and the manager sent someone to repair it. His repair started with cutting out a roughly 2 foot by 2 foot section of our master bedroom wall to access the pipe to the bathtub. The

repair to that wall was completed with tape (no drywall). We showed the manager this, but nothing was done.

- We have open cut-outs in our walls to allow access to water shutoffs.
- We have exposed pipes in our hall closet going into the laundry room, exposing the innards of the wall to both rooms. The output drain is not sealed. We have raised this with the manager and nothing has been done. But larvae accumulates in both areas.
- Five or six years ago, as winter approached, our sliding glass door jammed and the manager sent someone to fix it. He placed an 8" piece of 2x4 (which he got from my neighbour) under the doorsill in an effort to level the door. We showed the manager this and explained that water would continue leaking into our suite. The door has not been properly repaired, and water has leaked onto the carpet ever since. A large patch of mould is clearly visible on and under the carpet spanning nearly 3 feet in from the sliding glass door.
- Our windows leak due to age and missing seals, which causes ice to form on the sills during the winter.
- Our front door has no weather stripping, and you can see daylight under the door. In the cold wet months we have water blowing in during storms. We have to stuff a towel under the door to prevent water and cold air from coming in.
- Our hot water tank was recently replaced (though there is no pan underneath).
- We were told on multiple occasions by the manager (Renata) that the door and windows would be replaced, though no date was ever given. We were later informed they would not be replaced.
- In all cases we had the building manager come down to inspect these issues and we stressed our frustration over the situation. In nearly all cases we were told the owner would be doing nothing further to remedy the issues.

- When paying rent in June 2022, I informed the manager (Tory) of two of the outstanding issues: the kitchen drawer face is falling off, and we have the same issue in the bathroom. Also, the storage shelves in the laundry room and main bedroom are old and warped and are no longer useable due to risk of collapse. None of these repairs have been made.

The tenant submitted many supporting photographs showing the condition of the above-mentioned items in need of repair.

On July 1, 2022, the tenant gave a written list setting out the maintenance issues to the landlord. A copy of the letter was submitted which stated:

July 1st 2022 [landlord],

Last month I informed Tory [building manager] of four outstanding issues. These issues are yet to be addressed.

While someone came to fix them he arrived with no tools and no supplies and was going to have to come back. He never did.

Since the facilities manager has changed three times of recent I provide a more complete list of issues still not resolved over the 15 years we have now lived here.

- Kitchen & Bathroom Cabinets need repair.
- Laundry & Bedroom shelves have rotted and need repair Bedroom Curtains have rotted and need replacement.
- Front door lock needs repair/replacement Front door weather seal does not exist
- Bedroom Windows leak, ice accumulates during the winter on window ledg (1/2")
- Sliding door leaks/no seal. Water penetrates nearly 3 feet inside under the carpet.
- Stove Fan needs replacing, duct needs cleaning
- Mould around kitchen sink needs repair this has been caused by repeated flooding of our

- unit by other units over the years without receiving proper cleanup assistance.
- The carpet in this unit is now 30 years old and needs replacing.
- Bug infestations require constant upkeep to prevent swarms in the unit. Particularly so with all the windows and doors leaking.
- Issues with parking spaces continue.
- One should not have to worry about if they have a parking space on their way home.
- Tenants (and management) should not be parking in other tenants spots intentionally.
- Lines signs and towing were available when we moved in.
- lack of Lawn care limits my use of my balcony. Lack of cleanup of tenant dogs poop outright prevents us from being able to use it on most days.

We look forward to these issues being addressed, [tenant]

The landlord and building manager acknowledged receiving the letter. They scheduled an inspection of the unit on July 7, 2022 and issued an eviction notice on July 11, 2022.

The tenant claimed that the boxes and clutter the landlord saw were related to the family's efforts to sort his spouse's belongings after her death three years earlier. The tenant wrote:

What my landlord refers to as "clutter" is the work we have been doing to pack up [my spouse's] life, say goodbye in our own time and create a new start.

The tenant stated that the landlord and managers have been in his unit many times and have never complained about clutter or anything else:

[The landlord] and his various managers have been in our suite multiple times over the years.

At no point have I received formal or informal notice regarding any concerns about my tenancy, including issues around cleanliness or clutter.

The tenant stated the landlord's concern of "health and safety" is the tenant's concern as well based on the repeated failure of the landlord to properly maintain the unit and the resultant poor repair described above.

The tenant wrote about remedying the condition of the unit after the Notice was issued:

As you will see from the photographs I have provided in Schedule D, we have eliminated the clutter from our home. The cleanup continues, and the maintenance issues depicted in photographs set out in Schedule E still need to be addressed, but we have done what we can on our end to rectify the concerns that we can control. We hope that [the landlord] will see our progress as a big step in the right direction, and I respectfully ask that our notice to evict be set aside.

...

Everything has now been sorted and distributed.

In support of his claim that he has done everything he can, the tenant submitted a signed letter from his long-time family friend JS dated August 19, 2022. JS stated she was a witness to the July 7, 2022 inspection by the landlord:

During this visit, I personally observed the following:

- Rotten drawers in the kitchen that are falling apart
- Old, brittle blinds in the master bedroom that fall apart if touched
- A hole in the floor of the room that houses the hot water tank (and bugs/bug larvae surrounding and coming out of the hole)
- Black carpeting near the sliding patio door in the living room

JS stated the tenant did not deny the landlord access to one of the rooms as the landlord claimed. She summed up the inspection as follows:

From my perspective, the visit with [landlord and property manager] was very uncomfortable. They came in hot and determined to point the finger at the cleanliness of the suite rather than view the obvious maintenance issues in an objective manner.

[The tenant] I has told me that little to no maintenance has been done to his suite over the past 15 years. Based on my own rental experience and from what I observed in [the tenant's] suite, it is very apparent that that is the case.

The tenant submitted another letter from CP who stated she has been a friend of the tenant's for over 40 years. She described a visit to the unit following the death of the tenant's spouse:

I visited [the tenant's] home in the spring of 2021. What I observed at that time was a family in crisis. Their suite is small, and it was filled with boxes of various household items as well as children's toys and Sharon's belongings which the children were not yet mentally or emotionally prepared to part with.

I also had an opportunity to observe the general condition of the suite. In addition to seeing a family in crisis and a cluttered, unkempt home, I also saw a suite that was in what I can only describe as a profound state of disrepair. As a former landlord myself, I can identify the difference between poor maintenance and poor housekeeping.

During my visit in spring 2021 I made the following observations:

- kitchen cupboards and drawers that are falling apart.
- holes carved into the walls exposing various plumbing connections and shutoffs.
- the blinds in both bedrooms are essentially non-functioning.
- the patio door in the living room does not properly close/seal.
- what appears to be black mould on the carpet near the patio door.

CP stated in the submitted letter that she is helping the tenant who has made "profound progress" in cleanup efforts. The clutter has "essentially been eliminated". Efforts to clean the carpet were not successful because of mould.

CP wrote:

I arranged for professional carpet cleaning to take place on Thursday, August 18th, but when the cleaners arrived they called me to advise that they were unable to clean the carpets due to a number of factors, including what they considered to be the presence of hazardous material (namely, black mould). This

was disappointing but not surprising news, given that the patio door has not been sealing properly for years.

I will personally be replacing many of the disposed household furnishings for [the tenant] and his kids so that they can enjoy a few upgrades in their home. Items have been ordered and will be delivered over the coming weeks. I am staggering their delivery, as most of the items require assembly, and [the tenant] has to pace himself with this type of work due to his physical limitations.

It is important to note that [the tenant's] children continue to struggle mentally and emotionally with the loss of their mother, the Covid pandemic and the stress of threatened eviction. They have a long road of healing ahead of them, but they are finding strength and grace through this challenging time.

I am hopeful that [the landlord] will view the cleanup efforts that [the tenant] and his kids have undertaken on the property as a measure of good faith in the spirit of cooperation and a fresh start for everyone. [The tenant] and I have spoken at length about the importance of maintaining a clean, organized household, not just from a health and safety perspective but also from a mental health and emotional wellbeing perspective and also to preserve the landlord's property in a respectful manner.

Having known [the tenant] all my life, I can say without hesitation that he is an intelligent, rational, fair and reasonable person who has endured a tremendous amount of pain and heartbreak over the past two years, which caused him to lose focus, motivation and drive, but he's getting back on track. Sometimes we just need a little extra support and a helping hand to find our way through the dark times, and he's coming back into the light. I am very proud of him and his children. They have dug deep and found the strength, determination and perseverance to push through this humbling period of adversity.

For all of the reasons set out herein, I am respectfully asking on [the tenant's] behalf that the notice to evict be set aside.

In summary, the tenant claimed that the unit requires repairs because the landlord failed to live up to their obligation to do maintenance and repairs over the years. His testimony was supported by the two letters of support.

Also, the tenant asserted that everything the tenant can do has been done since the issuance of the Notice. What now remains, is for the landlord to carry out their repair obligations.

Landlord's Response

The landlord as follows. He denied the tenant's evidence and conclusions. While the landlord acknowledged that no inspections had taken place during the tenancy, he stated that each request for a repair by the tenant was addressed and carried out in a timely manner. He stated that the repairs included replacement of a kitchen faucet, cleaning of a dryer vent and replacement of a washing machine.

The building manager did not have firsthand experience with the history of repairs.

The landlord described being shocked at the July 1, 2022 request from the tenant for repairs which he believed were so extensive they required the unit to be vacant.

The subsequent inspection revealed clutter, garbage, mounds of boxes and the clutter was "a fire hazard". The "boxes and stuff were overwhelming". The tenant denied access to one bedroom and the landlord suspected it is worse than what they saw.

The landlord acknowledged receipt of the current pictures of the unit and said that it looked better. Nevertheless, there remain serious issues of mould, insect larvae, water and other damage caused by the tenant. Repairs can only be addressed if the tenant moved out.

The landlord stated they had not received any complaints about the tenant, and they have never issued a warning to the tenant.

The landlord submitted no supporting evidence that the condition of the unit was a health or safety hazard.

In summary, the landlord claimed the tenant did not take reasonable care of the unit as a result of which the unit is in a state of disrepair. The landlord requested an Order of Possession.

Analysis

In the matter before me, the landlord has the onus of proof to prove that the reason in the Notice is valid.

A landlord may end a tenancy in certain circumstances. I turn to the following section of the Act:

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) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) [...]

The landlord issued the Notice claiming a right to end the tenancy under section 47(1)(d)(i) and (ii).

Tenant's and Landlord's Obligations

Section 32 outlined the respective responsibilities of the parties to maintain the unit:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In this case, each party claimed the other breached their duty.

Credibility

I acknowledge that the landlord disagreed with the tenant's version of events in key aspects. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Given the conflicting testimony, I have considered credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I do not find the landlord's submissions to be persuasive. I find the landlord's suggestion that the tenant is untruthful or exaggerating to be unsupported by the evidence.

I find the tenant's evidence to be the more credible in the circumstances as it was supported in all key aspects by documentary evidence. The tenant's testimony was believable, calm, and forthright, and supported by two witness' letters as well as photographs. I find the tenant's recollection and recounting of the events leading to the current condition of the unit to be convincing and credible.

I find the landlord was seldom in the unit and delegated the routine matters to the building managers. The building managers were not called to provide testimony and the manager who attended the meeting acknowledged she had no experience with the history of the tenancy having just recently started the job. I find the landlord's assertion that he, and the building managers throughout the 16-year tenancy, had not received requests from the tenant for repairs and maintenance, to be self-deception and wishful thinking.

I believe the tenant's recounting of events to be more likely correct. Therefore, I prefer the tenant's evidence in all respects. Where the evidence of the parties differs, I give greater weight to the tenant's version of events.

Condition of the Unit

I accept that the unit is in poor condition and needs repairs. Both parties acknowledge this. The tenant has testified in detail about this, and he has submitted articulate supporting evidence from CP and JS. I find the reason for the poor condition is the lack of repairs by the landlord over the years. I characterize the landlord's actions in maintaining the unit as careless, unconcerned and neglectful.

I accept that the landlord personally first learned of the full extent of deteriorating condition of the unit from the tenant's letter of July 1, 2022 including the poor conditions of the cabinets, the counters, the presence of mold, leaking and so on. However, I find the tenant requested repairs from the previous building managers over the 16 years of the tenancy. His requests were either not properly carried out or denied. In short, I find the landlord has done little meaningful upkeep on the unit and their inaction has led to the unit being unsuitable for occupation.

In reaching this conclusion, I have considered the likely age of the building elements. For example, I accept the tenant's testimony that the carpet in the unit was well worn when they moved in 16 years ago.

I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which states as follows:

This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Although this is a general guideline, typically used when determining amounts awarded for damaged items, I find it helpful on this matter to highlight that the carpet is likely at double the useful life expectancy.

Not all items are listed in this policy guideline. However, many of the problematic items are well beyond their useful life expectancy. I accept the tenant's evidence that many of the building elements have been falling apart for quite some time. The tenant's credible testimony is that the many issues he described have led to significant deterioration in building components as he described, including unusable carpet, leaking and mould. These are the issues which form the bulk of the basis for the Notice.

The landlord stated they were not made aware of all the issues the tenant says he raised in his letter of July 1, 2022. However, I note the previous building managers were the ones the tenant was primarily dealing with. As such, the landlord was unable to speak directly to the history of issues. I accept the tenant's evidence supported by the two letters that he repeatedly asked for repairs which were denied.

The letter from CP stated that lack of maintenance was apparent in her visit to the unit. She said, "what I observed in [the tenant's] suite, it is very apparent that that [lack of maintenance] is the case".

Considering the Act, the Policy Guidelines and the testimony, I find the landlord has failed to properly maintain the unit as required under the Act. I find the building elements are past their useful life expectancy. I find the landlord has ignored reasonable requests that they conduct maintenance and repairs.

Post-Notice Conduct of the Tenant

In, *Senft v. Society For Christian Care of the Elderly*, 2022 BCSC 744, the court stated Arbitrators must keep the “protective purpose” of the Act in mind. As well, the tenant’s actions after the Notice is issued are relevant:

[38] The Decision [of the RTB] contains no discussion of the context and purpose of s. 47 of the *RTA*. Several decisions of this Court confirm that RTB arbitrators must keep the protective purpose of the *RTA* in mind when construing the meaning of a provision of the *RTA*: *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 at paras. 11,27; *McLintock v. British Columbia Housing Commission*, 2021 BCSC 1972 at paras. 56-57; *Labrie v. Liu*, 2021 BCSC 2486 at para. 33; *Blaouin v. Stamp*, 2021 BCSC 411 at para. 60.

[39] The arbitrator failed to consider post-Notice conduct of the petitioner. The arbitrator found that the evidence of the current state of the rental unit, and its cleanliness after the petitioner’s retention of cleaners, was irrelevant. However, as this Court found in *McLintock* at paras. 58-59, post-notice conduct is relevant when deciding whether an end to tenancy was justified or necessary in the context of the protective purposes of the *RTA*.

[40] The evidence that the petitioner cleaned the rental unit was relevant to the consideration of whether the eviction was necessary and justified. By refusing to consider it, I find that the arbiter failed to engage in a purposive analysis of s. 47 under the *RTA*. For example, the arbitrator found that the rental unit was reasonably clean by August 2021. If that was the case, how could the petitioner’s conduct have placed other occupants or the landlord’s interests at risk? This is not something the arbitrator considered.

[underlining added]

I accept the tenant’s testimony as supported by photographs that “we have done what we can on our end to rectify the concerns that we can control”. I accept the witness statements that clutter has “essentially been eliminated”.

The landlord did not dispute that conditions were better based on the photographs the tenant sent. However, the landlord also acknowledged they did not do a recent inspection. Again, I accept the tenant’s evidence of the post-Notice actions.

I therefor find, in considering the post-Notice conduct of the tenant, that everything the tenant can do to rectify the conditions in the Notice has been done. As stated in the above Decision, I find the tenant's conduct relevant in deciding whether an end to the tenancy. I find the unit is reasonably clean and clutter free. I find the eviction is not necessary or justified.

Conclusion

I have considered the lack of warning to the tenant, the tenant's history of repair requests and the landlord's lack of maintenance, all of which are described above.

I find the landlord has failed to meet the onus of proof in this case. That is, I find the landlord has not established either of the two grounds listed in the Notice upon which they rely.

I further find that the unit has been cleaned and organized and the tenant has diligently done his part to the best of his ability. I find the remaining issues complained of by the landlord have occurred because of their dereliction of the duty to properly maintain the unit.

I therefore dismiss the One Month Notice which is of no effect. The tenancy shall continue until it is ended in accordance with the agreement and the Act.

The tenant is entitled to reimbursement of the filing fee of \$100.00 which I direct he may deduct from rent on a one time basis.

Conclusion

I therefore dismiss the One Month Notice which is of no effect. The tenancy shall continue until it is ended in accordance with the agreement and the Act.

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 09, 2022

Residential Tenancy Branch