



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the *Residential Tenancy Act* (the Act) on August 18, 2022, seeking:

- Cancellation of the One Month Notice to End Tenancy for Cause (One Month Notice),
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 AM on October 4, 2022, and was attended by the Tenant and the Landlord. All testimony provided was affirmed. As the Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and stated that they had no concerns with regards to the date or method of service, I found that they were sufficiently served with the NODRP for the purposes of the Act and the Residential Tenancy Branch Rules or Procedure (Rules of Procedure), and the hearing proceeded as scheduled. As the parties acknowledged receipt of each others documentary evidence and stated that they had no concerns with regards to the dates or methods of service, I therefore accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over myself and each other and to

hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, a copy of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Preliminary Matter #2

In their Application the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the other claim is not sufficiently related to the One Month Notice, I exercise my discretion to dismiss the following claim by the Tenant with leave to reapply:

- An order for the Landlord to comply with the Act, regulation, or tenancy agreement.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a One Month Notice and recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55(1)?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy commenced on March 15, 2019, and that \$1,400.00 in rent is due on the first day of each month. The parties were agreed that the landlords named in the written tenancy agreement before me no longer own the property, and that the respondent named in the Application is the current landlord (the Landlord), who purchased the property from the previous landlords/owners approximately a year and a half ago.

The Landlord stated that they are afraid to go to the rental unit as the Tenant has a large number of weapons inside, including knives, bows and arrows, and guns of some sort. The Landlord stated that the Tenant is regularly shooting weapons inside the rental unit, including the guns and the bow and arrow, causing damage to the property. The Landlord stated that this is a four plex and the Tenant's use of weapons inside the rental unit is a significant risk not only to their property, but to the other occupants of the residential property as well. The Landlord pointed to photographic evidence before me in support of their position that the Tenant has the weapons alleged inside the rental unit, and that their use of these weapons is causing damage to the rental unit. In particular, the Landlord pointed to a photograph showing many small holes in a door, a mattress leaned against the wall with cardboard attached, which the Landlord stated the Tenant uses for target practice, and a microwave on the floor with many puncture holes in its side.

The Landlord stated that as a result at the above noted behavior and damage to the property, the One Month Notice was personally served on the Tenant on August 17, 2022. The One Month Notice in the documentary evidence before me is signed and dated August 17, 2022, has an effective date of September 30, 2022, and lists the following reasons for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; and
- the tenant's rental unit is provided by the employer to the employee to occupy during the term of employment and the employment has ended.

In the Details of cause section of the form it states "NOT SAFE AND HAS BEEN ONGOING".

The Tenant acknowledged personal receipt of the One Month Notice on August 17, 2022, but denied that the Landlord has cause to end the tenancy under section 47 of the Act. While the Tenant acknowledged that the pictures submitted by the Landlord look "a little scary", they stated that the guns referred to as weapons/firearms by the Landlord are actually toys, not "real" firearms, as they are airsoft guns that shoot plastic pellets. The Tenant stated that these pellets do not cause injury and cause minor or little damage. The Tenant stated that the ground for ending the tenancy with regards to employment is invalid as they are not now, nor have they ever been, employed by the Landlord. The Tenant denied that any illegal activity is occurring in the rental unit. The Tenant stated that none of the other occupants of the property have any noise or safety complaints with regards to their activity in the rental unit and that they know they have airsoft guns. Although the Tenant acknowledged that one door has been damaged by their use of airsoft guns in the rental unit, they stated that this damage is over two years old, and that the Landlord has known since they purchased the property that the Tenant uses airsoft guns. The Tenant stated that while they could "sort-of" understand the Landlord's concern if there was ongoing damage, they deny that their activity is causing any further damage to rental unit.

When I questioned the Tenant regarding the microwave shown in one of the Landlord's photographs, the Tenant stated that although they store this microwave indoors, they use it outside as target practice for their bow and arrow. I also questioned the Tenant regarding a photograph showing two metal pellets on the floor of the rental unit, as the Tenant had previously stated in the hearing that they only use airsoft guns in the rental unit that shoot plastic pellets. The Tenant denied stating that they only use airsoft guns that shoot plastic pellets, and stated that they definitely mentioned earlier in the hearing that they also use pellet guns. The Tenant stated that the pellets are very small and that although they cause a little bit more damage than the plastic pellets, the damage to personal property is still very minimal.

The Tenant also denied that the damage caused by their use of airsoft and/or pellet guns inside the rental unit has caused extraordinary damage and stated that they are willing to box up and stop using them indoors if requested by the Landlord and if absolutely necessary.

Analysis

Based on the documentary evidence and testimony before me, I find that a tenancy to which the Act applies exists between the parties. I am also satisfied that the One Month Notice was personally served on the Tenant on August 17, 2022, and that the Tenant therefore disputed the One Month Notice on time when they filed their Application seeking its cancellation on August 18, 2022.

Section 47(1) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk and/or the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property. Although the Tenant argued that their use of airsoft and/or pellet guns inside the rental unit has not put the Landlord's property at significant risk, and that the damage caused to the rental unit by their use of airsoft and/or pellet guns inside the rental unit does not constitute extraordinary damage, I disagree.

I find the very nature of the damage cause to the rental unit by the Tenant's use of airsoft and/or pellet guns inside the rental unit, to be extraordinary. I find that bullet holes of any kind, and especially in the number I find to be present in the rental unit from the photographs submitted by the Landlord, go far beyond what can be expected

by a reasonable person to constitute usual, regular, ordinary, or customary damage to a rental unit caused by using the unit for residential purposes.

I am also satisfied that the Tenant's use of both airsoft and pellet guns inside the rental unit places the Landlord's property at significant risk for both damage and liability due to injury. Further to this, the Tenant acknowledges that their use of airsoft and pellet guns inside the rental unit has caused damage to the rental unit, and while the Tenant characterizes the damage caused by airsoft and pellet guns as very minor, I disagree based on the documentary evidence before me from the Landlord. I am also not satisfied that ongoing damage to the rental unit has ceased and/or that damage will not re-occur through the Tenant's use of the pellet and airsoft guns in the rental unit, as alleged by the Tenant. Finally, having re-reviewed the recording of the proceeding, I am also concerned that the Tenant was intentionally attempting to mislead me about the nature of the guns being used within the rental unit, and therefore the likelihood that their use presents a significant risk to the Landlord's property, by advising me that they only use airsoft guns in the rental unit that shoot plastic pellets, which I find to be untrue. I am satisfied on a balance of probabilities that if I had not questioned the Tenant in the hearing about how the above noted testimony contradicts a photograph before me from the Landlord showing metal pellets on the floor of the rental unit, the Tenant would not have disclosed that they also use or have used pellet guns inside the rental unit that shoot metal pellets.

Based on the above, I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice, without leave to reapply, as I am satisfied by the Landlord on a balance of probabilities that the Tenant's use of airsoft and/or pellet guns inside the rental unit puts the Landlord's property at significant risk, and that the damage caused to the rental unit by the Tenant's use of airsoft and/or pellet guns inside the rental unit, constitutes extraordinary damage. As the Tenant was not successful in their Application, I declined to grant them recovery of the filing fee.

As I am satisfied that the One Month Notice complies with section 52 of the Act, and as the parties agreed at the hearing that rent for the month of October 2022, has been paid, I therefore grant the Landlord an Order of Possession for the rental unit effective at 1:00 P.M. on October 31, 2022, pursuant to sections 55(1) and 68(2)(a) of the Act and Residential Tenancy Policy Guideline #54.

Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

Pursuant to section 55(1) and 68(2)(a) of the Act, I grant the Landlord an Order of Possession for the rental unit effective **1:00 P.M. on October 31, 2022, after service on the Tenant**. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant or any occupants fail to comply with this Order, this Order may be filed in 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 Branch under Section 9.1(1) of the Act.

Dated: October 12, 2022

Residential Tenancy Branch