Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310082801: CNC-MT
File #310083855: OPC

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 47 an 62 cancelling a One-Month Notice to End Tenancy signed on July 26, 2022 (the "One-Month Notice"); and
- an order pursuant to s. 66 for more time to dispute the One-Month Notice.

The Landlord files its own application seeking an order of possession pursuant to s. 55 of the *Act* after issuing the One-Month Notice.

M.S. appeared as the Tenant. He was joined by D.A., his advocate, and S.D., who assisted the Tenant in his submissions. R.H. appeared as counsel for the Landlord. M.S., S.M., and M.P, appeared as agents for 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) Is the Tenant entitled to more time to dispute the One-Month Notice?
2) Should the One-Month Notice be cancelled?
3) 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 Tenant took occupancy of the rental unit on October 6, 2014.
- Rent of $420.00 is due on the first day of each month.
- An security deposit of $187.50 is held by the Landlord in trust for the Tenant.

A copy of the tenancy agreement was put into evidence confirming these details. The Landlord is a non-profit society providing housing to individuals facing mental illness and substance use challenges.

I am advised by Landlord's counsel that the One-Month Notice was served by the Landlord on July 26, 2022 by way of registered mail. The Landlord's evidence includes a registered mail tracking receipt for July 26, 2022. The Tenant acknowledges receipt of the One-Month Notice but indicates that it was received on August 16, 2022. The Tenant's evidence includes tracking information showing it was retrieved on August 16, 2022.

It was argued on behalf of the Tenant that though there is a mailbox for his rental unit, he rarely had cause to check it as his disability payments were deposited automatically. The Tenant says he was not away from the residential property at the relevant time but that he did not have a key for his mailbox. I am told by the Tenant that he found out that the Landlord was attempting to evict him after speaking with another occupant at the residential property, which prompted him to ask an employee to give him access to the mailbox. I was advised by the Landlord's representatives that the Tenant was given a key for the mailbox.

A copy of the One-Month Notice was put into evidence. It lists the following causes for ending the tenancy:

- 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; and
    - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The One-Month Notice further provides details with respect to the causes, stating the following:

> The tenant has broken his window that the glass company is unable to fix because of the condition of the apartment.
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> The tenant as been advised of what to clear so the glass company can fix the window. The tenant has not made any attempt to solve this issue.
>
> Along with not being able to access the tenants (sic) apartment, the tenant has repeadedly (sic) clogged his tiolet (sic) with various objects that do not belong in a toilet. This has resulted in flooding.

Landlord's counsel submitted that other occupants at the residential property had in February 2022 reported to the Landlord that the Tenant's window was broken. The Landlord submits the window was broken from the inside, though the Tenant says he heard the window break while he was laying on his couch one evening. I am advised by Landlord's counsel that the Landlord had made several attempts to repair the window but has been unable to do as the Tenant's rental unit is untidy to the point that the window is inaccessible to the repair people.

The Landlord's evidence includes photographs showing the state of the rental unit on June 6, 2022, including the broken window and the Tenant's belongings in front of the window. Landlord's counsel submitted that pieces of glass have fallen from the window down onto a common area below the rental unit. Both parties discussed a bird flying into the rental unit. However, the Tenant testified that the window is double paned and that only one of the panes is currently broken.

The Landlord's evidence includes letters from February 25, 2022 and March 10, 2022 where requests are made to access the rental unit to fix the broken window. Landlord's counsel advised that window repair company sent someone to repair the window on February 28, 2022, March 23, 2022, and August 18, 2022 but could not do so as the Tenant had not cleared his belongings from in front of the window. I am told the repair people told the Landlord's employees that they could not undertake the repairs with the rental unit in that state.

I am told by Landlord's counsel that the Landlord had offered to assist the Tenant in cleaning his rental unit such that the window could be repaired. The Landlord's evidence includes a letters dated March 10, 2022 and April 27, 2022 which offers assistance to the Tenant in cleaning the rental unit.

Landlord's counsel argued that the Tenant's failure to clean his rental unit despite repeated requests jeopardized the Landlord's lawful right to maintain and repair the residential property as required under the *Act* and puts the Landlord's property at significant risk. I am told the window still has not been repaired.

The Tenant made no submissions in response to the Landlord's substantive allegations that he did not clean the rental unit so that the window could be repaired. The Tenant testified that after he received the One-Month Notice he took steps to clean up the rental unit.

The Tenant's advocate urged me to consider the nature of housing involved with respect to the tenancy and the likelihood the Tenant would be rendered homeless should the tenancy come to an end. The Tenant's written submissions indicate the Tenant was diagnosed with a mental illness, is supported by a care team, and that he "suffers from impaired cognition, affecting his comprehension and capacity to understand situations and documents without assistance".

I was further directed by the Tenant's advocate to *Senft v. Society For Christian Care of the Elderly*, 2022 BCSC 744 ("*Senft*"), which the Tenant's advocate stood for the proposition that post-notice conduct of a tenant is a relevant consideration on whether ending a tenancy is justified. Tenant's advocate also submitted that the Landlord's evidence includes only one warning letter dated July 26, 2022 that the Tenant's conduct warranted ending the tenancy.

Landlord's counsel contextualized *Senft* and advised that it involved a senior who was ill with Covid-19 and could not clean the rental unit due to his age and health. It was argued that the circumstances here are different in that the Tenant did not request more time to clean the rental unit or request help in doing so, simply ignoring the requests. Landlord's counsel further argued that the One-Month Notice was not issued due to a breach of a material term, such that the issue of whether the Tenant was given a warning letter is not relevant.

Landlord's counsel advised that a drain within the Tenant's rental unit had been plugged on two occasions in July 2022. I am advised by the Landlord's agent that the plugs were discovered by the Landlord after water had leaked into the hallway from the Tenant's rental unit. The Landlord alleges that the plumbing had been clogged by the Tenant stuffing items into the drains. The Landlord's evidence includes photographs of the clogged items, which the Landlord describes as pieces of carpet in its written submissions and as paper towel and strings from a mop in its letter dated July 26, 2022. In that letter, the incidents are described as follows:

> I am writing to you regarding a serious concern with your tenancy. On July 18, 2022, building attendant workers responded to water leaking out from under your door. After entering the suite, they discovered that your toilet had overflowed because an entire roll of paper towel had been stuffed and flushed down the toilet. After fixing your toilet on July 18, building attendant workers then responded again on July 20, 2022 to your toilet overflowing. On investigation, workers discovered several pieces of a rug had been flushed down the toilet, backing up the drain and causing water to leak throughout your suite and into the hallway.

I am further advised that a similar incident occurred in the Tenant's rental unit in 2021. The Landlord's evidence includes a receipt dated June 25, 2021 related to clearing the drain in which a coffee lid had been found to be flushed down the toilet. The Landlord submits that the clogged drains in July 2022 constitute extraordinary damage.

The Tenant provided no submissions on whether he clogged the drains in question. However, it was submitted on behalf of the Tenant that clogged drains did not constitute extraordinary damage.

Landlord's counsel further advised that the Tenant had threatened the Landlord's agent, M.S., with a saw on August 18, 2022. The Landlord's evidence includes an incident

report from August 18, 2022 detailing that the dispute arose after the window repair people advised the rental unit had not been cleaned sufficiently to permit them to undertake the repairs, which prompted the Tenant to become “rude and aggressive”.

The Tenant specifically denies threatening M.S.. The Tenant indicates that M.S. had leaned onto his saw, which was on his couch, bending the blade. The Tenant says that he was attempting to show to M.S. the damage to the blade. The Tenant’s advocate argued that the One-Month Notice was not issued based on the alleged incident of August 18, 2022 having occurred after the notice was served.

The parties confirmed the Tenant continues to reside within the rental unit.

Analysis

The Tenant seeks to cancel the One-Month Notice and more time to do so. The Landlord seeks an order of possession pursuant to the One-Month Notice.

I accept the Landlord’s evidence that the One-Month Notice was served via registered mail sent on July 26, 2022. It is undisputed that the Tenant received the One-Month Notice on August 16, 2022.

When a document is served in accordance with the methods set out under s. 88 or 89 of the *Act*, s. 90 permits a finding of deemed receipt of those documents. The purpose of s. 90 is to ensure that disputes before the Residential Tenancy Branch are dealt with in a timely and efficient manner. Policy Guideline #12 provides guidance with respect to the service provisions of the *Act*. The guidance from Policy Guideline #12, citing relevant caselaw, is clear that the deemed service provisions set out under s. 90 of the *Act* form an evidentiary presumption of service, which can be rebutted when fairness requires that to be done.

In this instance, I am advised that the Tenant did not have his mailbox key during the relevant period and that he rarely had occasion to check his mailbox. I am further advised that the Tenant obtained the slip to retrieve the One-Month Notice after asking to access his mailbox from the Landlord’s employee. The Landlord advises that the Tenant was given a mailbox key at the outset of the tenancy.

I accept the Tenant’s evidence, which was not directly disputed by the Landlord, that he did not have a key for his mailbox in late July and early August 2022. Under the

circumstances, I find that it would be unfair to apply s. 90 of the *Act* without regard to the clear evidence that the One-Month Notice was received on August 16, 2022. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* and that it was received by the Tenant on August 16, 2022.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. Pursuant to s. 47(4) of the *Act*, a tenant may file an application disputing the notice but must do so within 10 days of receiving it. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord. In this instance, the One-Month Notice was issued on the basis of ss. 47(1)(d)(ii) (jeopardizing health or safety or a lawful right), 47(1)(d)(iii) (putting the Landlord's property at significant risk), and 47(1)(f) (causing extraordinary damage).

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed his application on August 26, 2022. As the One-Month Notice was received on August 16, 2022, I find that the Tenant filed his application within the proscribed time limit imposed by s. 47(4) of the *Act*. The Tenant's application under s. 66 of the *Act* for more time to dispute the One-Month Notice was unnecessary under the circumstances.

As per s. 47(3) of the *Act*, all notices issued under s. 47 must comply with the form and content requirements set by s. 52 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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-32). As the One-Month Notice was received on August 16, 2022, the effective date is automatically corrected to September 30, 2022 by application of s. 53 of the *Act*.

The Landlord alleges that the Tenant caused extraordinary damage the rental unit by plugging the drains within the rental unit. Section 47(1)(f) states the following with respect to this ground for ending a tenancy:

> **47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> (…)

> (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

The Landlord's documentary evidence indicates the incidents occurred on July 18, 2022 and July 20, 2022, as outlined in its letter dated July 26, 2022. That same letter described the blockages as paper towel and pieces of rug. The Landlords evidence includes photographs of the blockage and the water pooled on the floor. The Tenant did not specifically deny clogging the drains as alleged, though it was submitted that the damage did not constitute extraordinary damage.

On the evidence before me, I find that it is more likely than not that the Tenant clogged the bathroom drains in his rental unit on July 18, 2022 and July 20, 2022. I am advised by the Landlord and accept that the blockages were only discovered after water had escaped into the hallway in front of the Tenant's rental unit. The Tenant did not argue otherwise or indicate that he reported the issue. Review of the photographs show large items consistent with an attempt to improperly dispose of them into the plumbing system. Given the size of the items and that the Tenant's rental unit appears to have been the only one affected, it appears more likely than not the blockage originated in the Tenant's bathroom.

As mentioned above, the Tenant's advocate submitted that the damage did not constitute "extraordinary damage". The Policy Guidelines are silent with respect to the type of conduct or damage constitutes extraordinary damage. Marriam-Webster's Dictionary defines "extraordinary" as "going beyond what is usual, regular, or customary" and as "exceptional to a very marked extent".

Flushing or disposing of paper towel and pieces of fabric into a drain is not a usual or regular use of plumping. Given the photographs of what had been pulled out, I find that this is so to a marked extent such that it is extraordinary. The nature of the items put into the drain by the Tenant would have the obvious effect of plugging the it, thereby risking an overflow. Perhaps the conduct could be overlooked if the Tenant was unaware that this conduct would imperil the property. However, the Landlord's evidence demonstrates in June 2021 that the Tenant had blocked his toilet by flushing a coffee lid down it. Though the One-Month Notice was not issued due to June 2021 incident, it is clear that the Tenant ought to have been aware that disposing of items of that nature into the plumbing would cause blockages. However, the Tenant's conduct persisted, having attempted to dispose of items down the drain on two occasions in July 2022,

mere days apart. The Tenant's conduct in this regard is to the extent that I would characterize it as intentional damage to the Landlord's property, which is entirely unacceptable.

I am asked to consider the nature of the Tenant's housing by his advocate. Though I appreciate the risk of homelessness to the Tenant should the One-Month Notice be upheld, it does not seem fair or reasonable to the Landlord or the other occupants to completely disregard conduct from the Tenant which would otherwise justify ending a tenancy under normal circumstances. To be clear, the Tenant's actions caused a drain blockage, resulting in an overflow, that was only discovered by the Landlord after it had spread into the hallway in front of the Tenant's rental unit. It is mere chance that the damage was not more extensive. The Tenant's action not only put his rental unit at risk of water damage, but it also had the potential to deleteriously impact adjacent rental units thereby risking the housing for other vulnerable tenants.

I find that the Landlord has established that the Tenant caused extraordinary damage the rental unit with respect to the blockages. I further find that the Tenant's conduct put the Landlord's property at significant risk, thus justifying the notice under s. 47(1)(d)(iii) of the *Act* as well. I would uphold the notice with respect to flooding caused by the Tenant following the blockages in the rental unit. The Tenant's application to cancel the One-Month Notice is hereby dismissed. The Landlord is entitled to an order of possession pursuant to s. 55 of the *Act*. As I would uphold the One-Month Notice due to the incidents involving the drain blockages, I need not consider the other grounds alleged by the Landlord.

I wish to note that I have reviewed *Senft* and considered its application to present matter. I highlight the following portions of the decision:

> [38] The Decision 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*.

Given the grounds on which the One-Month Notice was upheld, I find that the guidance from *Senft* is not instructive. The *Act* involves a balancing of interests between landlords and tenants in residential tenancies, which includes the provision of safeguards and procedural rights that are not present for tenants at common law. However, the protective purpose of the *Act* does not, in my view, excuse conduct from a tenant that has intentionally caused extraordinary damage and imperiled a landlord's property in the process, which in this instance occurred on three separate occasions. Such an interpretation would obliterate a landlord's right to end a tenancy under ss. 47(1)(d)(iii) and 47(1)(f). As mentioned above, the Tenant ought to have known his conduct would cause damage and risked putting the Landlord's property at risk. Despite this, the Tenant persisted in his conduct. Further, a tenant's conduct after receiving a notice to end tenancy for causing extraordinary damage and imperilling a landlord's property does not, in my view, excuse wilful conduct giving rise to the notice.

Policy Guideline #54 provides guidance with respect to determining the effective date of an order of possession and states the following:

> An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.
>
> While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:
>
> - The point up to which the rent has been paid.
> - The length of the tenancy.
>   - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
> - If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
>   - e.g., If the tenant provides evidence of a disability or a chronic health condition.
>
> An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If

there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

There was no suggestion from the Landlord that the Tenant had not paid rent for the month of October 2021. Given the length of the tenancy and the fact rent for October has been paid, I make the order of possession effective on October 31, 2022.

Conclusion

The Tenant's application to cancel the One-Month Notice is dismissed.

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

It is the Landlord's obligation to serve the order of possession on the Tenant. 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: October 19, 2022

Residential Tenancy Branch