



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application for cancellation of a One Month Notice to End Tenancy for Cause ("1 Month Notice").

Both the landlord's agent and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The application was amended, with consent, to remove the name of the tenant's son who is not a tenant under the tenancy agreement.

The tenant had named the building manager as the landlord rather than the landlord identified on the 1 Month Notice that is the subject of this proceeding. I have amended the application accordingly.

I confirmed the tenant sent his proceeding package to the landlord via registered mail.

The landlord submitted evidence to the Residential Tenancy Branch on October 11, 2022 but the landlord acknowledged she did not serve the same package to the tenant. The tenant questioned what was in the landlord's evidence package and mentioned breach letters. I saw what appeared to be breach letters but other documents as well that appeared to be a portion of the tenancy agreement and emails. The landlord explained she did not serve an evidence package upon the tenant because he would already have these documents.

The tenant provided as evidence a copy of the 1 Month Notice and part of the tenancy agreement. The landlord stated the tenant did not provide her with any evidence either.

The Rules of Procedure were developed in accordance with the principles of natural justice to ensure a fair and efficient hearing process. Below, I have reproduced relevant rules, in part:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible.

[My emphasis underlined]

The Rules of Procedure also provide deadlines for submitting and serving evidence so that the other party has sufficient time to review the evidence and prepare a response or defence.

Since the landlord was seeking an Order of Possession based on the 1 Month Notice, and the tenant was seeking to cancel it, I admitted the 1 Month Notice into evidence as both parties were relying upon it. I read aloud from the 1 Month Notice before me to ensure it was an accurate copy of the 1 Month Notice the landlord served upon the tenant. I did not admit the tenancy agreement submitted by the tenant.

As for the landlord's evidence, which was submitted late to the Residential Tenancy Branch and not served to the tenant, I was of the view that to admit and consider an evidence package that was not served upon the tenant would be prejudicial and inconsistent with the principles of natural justice as the tenant would not know in

advance all the materials the landlord intended to rely upon at the hearing. Therefore, I did not admit the landlord's evidence.

Other than reviewing the 1 Month Notice, I informed the parties that I would make this decision based on verbal testimony of both parties since I did not have any other admissible documentary, photographic or other supporting evidence before me. Both parties indicated they understood.

I also gave the parties the option to explore resolution of this dispute by way of a mutual agreement; however, the landlord's agent did not have an appetite for exploring this option any further. Accordingly, I proceeded to hear from both parties and I make a decision as to whether the 1 Month Notice should be upheld or cancelled after considering the evidence that has been admitted and is before me.

Issue(s) to be Decided

Has the landlord proven the 1 Month Notice should be upheld and entitlement to an Order of Possession?

Background and Evidence

The parties provided inconsistent testimony as to the terms of tenancy, which I have summarized below:

The landlord testified that the tenancy started on May 1, 2020 and the tenant paid a security deposit of \$400.00. The landlord testified that the tenant's current rent obligation is \$860.00 payable on the first day of every month. The landlord testified that the tenant paid a pet damage deposit but she was uncertain as to the amount paid or the date it was paid.

The tenant testified that his tenancy started on May 1, 2019 and the tenant paid a security deposit of \$430.00. The tenant testified that his current rent obligation is \$875.00 payable on the first day of every month. The tenant testified that he paid a pet damage deposit of \$460.00 in January 2022 or February 2022.

The landlord issued the subject One Month Notice to End Tenancy for Cause ("1 Month Notice") on May 26, 2022 and posted it to the rental unit door. The tenant acknowledged finding the 1 Month Notice on his door on May 29, 2022. The 1 Month

Notice has a stated effective date of July 1, 2022. The tenant filed to dispute the 1 Month Notice on June 3, 2022 which is within the time limit for doing so.

The 1 Month Notice indicates the following reasons for ending the tenancy:

- *Tenant or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*
 - *Seriously jeopardized the health and safety or lawful right of another occupant or the landlord.*
 - *Put the landlord's property at significant risk.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*
- *Residential Tenancy Act only: Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.*

In the Details of Cause, the landlord wrote:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

1. Changed all the locks on the apartment door so they aren't accessible to the Landlord
2. Brought a dog to live in the apartment without proper approval of the landlord and didn't provide damage deposit at least 30 days after bringing in the pet. Dog has defecated in the lobby at one point.
3. Parking two vehicles in the lot - one of which isn't properly licensed or insured
4. Constantly parking in the Fire Lane despite numerous warnings not to
5. Performing Vehicle (motorcycle) maintenance on the lawn in front of apartment
6. Deck is filled with materials/goods and it is very unsightly - many complaints from others
7. Keeps motorized vehicles in the apartment (2 motorcycles). This jeopardizes the safety of the other tenants in the building and many have complained about the smell of gasoline in the hall outside of apartment.
8. Have had numerous police presences at the apartment
9. May 30, 2022 - Other tenants threatening to leave because of the loud music and other issues with tenant

[Reproduced as written]

Given the multiple reasons indicated on the 1 Month Notice, I instructed the landlord's agent to describe the landlord's reasons for seeking to end the tenancy, starting with the most concerning or egregious. Below, I have summarized the landlord's testimony and the tenant's responses:

1. Tenant changed locks to rental unit

The landlord testified that she took over management of the residential property in September 2021. In the tenant's file was a letter written by the tenant dated for August 2021 whereby the tenant informed the former landlord that he had changed the locks to the rental unit due to a break-in. The landlord also described how it is obvious in looking at the locks on the front door of the rental unit that the tenant had changed the locks.

The landlord acknowledged that she did nothing about the change of locks initially as it was not a vital issue to the landlord and she decided to wait to see what the tenant was like. Then in April 2022 she issued the tenant a breach letter about the locks along with a number of other breach letters. The landlord described how the tenant was instructed to "rectify" the issue immediately in the breach letter but acknowledged there was not a specific instruction as to what the landlord expected to occur to rectify the breach. During the hearing, the landlord stated that she had expected to receive a copy of the key(s) for the tenant's lock(s).

The tenant acknowledged that he changed the locks due to a break in and he sent the former landlord a letter about it in August 2021. The current landlord took no issue with it until April 2022 when she gave him several breach letters.

The tenant stated he is agreeable to giving the landlord a copy of the two keys required to enter the rental unit if that is required. The tenant stated he could deliver copies of the keys to the landlord within three days of the hearing date by delivering them to the landlord's drop box.

The landlord confirmed there is a drop box and upon receipt of the keys she will check to make sure they open the rental unit door. The landlord stated she would serve the tenant with a 24 hour notice of entry prior to trying the keys.

During the hearing, I ordered the tenant to deliver to the landlord's drop box a copy of the two keys the landlord would need to access the rental unit, within three (3) days of the hearing date. I further cautioned the tenant that failure to comply with my order would be grounds for the landlord to pursue ending the tenancy for failure to comply with an order of the Director. The tenant indicated he understood and would comply with my order.

2. Dog

The landlord testified that under the tenancy agreement the tenant is required to get permission to have a pet and pay a pet damage deposit but the tenant did not get any such permission before acquiring a dog. The landlord gave the tenant a breach letter in April 2022 requiring the tenant to “rectify” the breach but the breach letter did not specify what action the tenant was required to do to rectify the breach. The landlord testified that the tenant did respond to this breach letter by stating that he had mailed a request for permission but that it must have been lost in the mail. When the landlord stated she did not receive such a request the tenant gave the landlord a pet damage deposit, which the landlord accepted.

The tenant testified that he acquired the dog around Christmas time 2021 and paid the pet damage deposit in January 2022 or February 2022, which the landlord accepted so he did not understand why he was getting a breach letter about the dog in April 2022.

3. Messy deck

The landlord testified that the tenant’s deck was very unsightly with the items he placed on the deck. The landlord stated she has photographs of the deck but she did not provide them as evidence. The landlord issued a breach letter to the tenant in April 2022 requiring him to clean up the deck within one month and the tenant complied with the instruction; however, the deck has more recently returned to being in a messy state and she issued another breach letter to the tenant on September 27, 2022.

Having heard the tenant had already complied with the landlord’s breach letter when the 1 Month Notice was issued, I informed the parties that the corrected breach was not a basis to issue the 1 Month Notice on May 26, 2022 for a messy deck. However, having heard the landlord state she has issued another breach letter, I suggested to the tenant that he clean up his deck if he wants his tenancy to continue. The tenant indicated he would.

4. Frequent police presence

The landlord testified that the police have been called to the rental unit on a number of occasions. The landlord issued a breach letter to the tenant in January 2022

concerning the multiple police visits. I noted that the landlord did not provide dates the police were at the rental unit on the 1 Month Notice.

The tenant acknowledged that the police have attended his unit four times during his tenancy. The tenant testified that one time was to deal with a driving infraction and three instances the police were called to remove unwanted persons from the rental unit.

In the absence of dates the police attended the unit in the details of cause, I informed the parties that I was unsatisfied the landlord had provided sufficient detail in the Details of Cause or that there were multiple police attendances after the January 2022 breach letter and I would not uphold the 1 Month Notice with insufficient detail on the 1 Month Notice. However, I strongly suggested to the tenant that he take greater care in choosing the people he permits to enter the rental unit and I cautioned the tenant that he is responsible for the conduct of the persons he permits on the residential property. The tenant indicated he was working on this.

5. Motorcycles in rental unit

The landlord testified that the tenant had brought two motorcycles in the rental unit and the smell of gas could be detected by other tenants who complained to the landlord. The landlord gave the tenant a breach letter about this in April 2022. The landlord acknowledged that following the breach letter she does not know where the two motorcycles went and she did not inspect the rental unit to determine if the motorcycles are still in the rental unit. The landlord stated when it is sunny outside, she sees the motorcycles outside but when it is rainy, they disappear.

The tenant testified that he took two motorcycles to his friend's farm and there are two other motorcycles outside at the residential property. The tenant stated that he will not ever again have motorcycles in the rental unit.

6. Working on vehicles in the common area

The landlord testified that it is a violation of a term in the addendum to the tenancy agreement to work on vehicles in the common areas of the property. As a result, the landlord issued a breach letter to the tenant on August 8, 2022. Since this violation was after issuance of the 1 Month Notice, I found the matter irrelevant to the reasons for issuance of the 1 Month Notice.

The tenant testified that he does not have a copy of the addendum to the tenancy agreement. The landlord testified that she has provided one to the tenant already.

7. Parking a vehicle in another tenant's assigned parking spot

The landlord submitted that the tenant parked two vehicles in the parking lot, one in his own assigned spot and the other in another tenant's parking spot. Also, the vehicle was unlicensed and/or "dead", which is a violation of a term in the addendum.

The tenant stated that he parked in the parking spot of his friend who was working abroad at the time and had this person's permission. The tenant denies that the vehicle was unlicensed or dead. The tenant concedes the vehicle was covered with a tarp for the winter but maintained that the vehicle was licensed and it still ran.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The 1 Month Notice before me has several reasons for ending the tenancy. I shall address the reasons provided under section 47 of the Act in the same order appearing on the 1 Month Notice, as seen below.

Significant interference or unreasonable disturbance of other occupants

During the hearing, the landlord indicated she received complaints from other tenants regarding the smell of gas coming from the rental unit, an unsightly patio, and multiple police visits to the rental unit by the police which makes the other tenants uncomfortable.

In response to these complaints, the landlord issued breach letters to the tenant for the police calls in January 2022 and in April 2022 for the other two issues.

The landlord did not include dates or otherwise indicate how many times the police were called to the rental unit on the 1 Month Notice to demonstrate other tenants were disturbed by this after the landlord issued the breach letter in January 2022. As such, I am unsatisfied the landlord gave sufficient details or that the tenant unreasonably disturbed other tenants with police calls after the breach letter was issued.

Following the issuance of the April 2022 breach letters, the landlord confirmed the tenant did clean up the deck and complied with the breach letter by the time the 1 Month Notice was issued. Accordingly, the messy deck was no longer an issue when the 1 Month Notice was issued.

As for the smell of gas, the landlord issued a breach letter to instruct the tenant to remove any motorcycles from the rental unit; however, the landlord did not take further action to determine whether the tenant complied with this demand. The tenant claims the motorcycles are not in his unit and he has moved two of his motorcycles to his friend's farm. The landlord had not provided sufficient evidence to refute that and as a result, I am unsatisfied the landlord had grounds to end the tenancy for this reason on May 26, 2022.

Seriously jeopardized the health and safety or lawful right of another occupant or the landlord; and, put the landlord's property at significant risk

The landlord did not specify which of the tenant's actions have seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk. However, I presume that the smell of gas coming from a rental unit is consistent with a gas powered engine being in the rental unit and I accept that storing gas powered machines in living accommodation is highly inappropriate and doing so may pose a fire hazard and/or contamination of the property which would put the health and safety of other occupants at risk and the landlord's property at risk. However, of consideration is that the landlord gave the tenant a breach letter with a view to giving the tenant the opportunity to correct the breach yet the landlord has not inspected the rental unit to determine whether the motorcycles are still being stored in the rental unit or otherwise gather evidence to refute the tenant's position that he removed the motorcycles.

I appreciate that the landlord's ability to inspect the rental unit has been significantly hindered since she did not have keys to the rental unit; however, I have issued an order to the tenant to provide the landlord with a copy of the keys. As such, going forward, the landlord will have the ability to conduct inspections of the rental unit, assuming she has the keys, and if the tenant does not provide the keys the landlord shall have a basis for ending the tenancy for the tenant's failure to comply with an order of the Director.

Presumably the landlord's lack of keys to the rental unit may also put the landlord's property at risk as the landlord would have been hindered from entering in the case of an emergency or to perform an inspection.

Under section 31 of the Act a tenant is not permitted to change the locks to a rental unit, as provided below:

(3)A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

The tenant did not produce evidence to show he gained the landlord's consent in writing to change the locks and I am satisfied the tenant breached this provision of the Act. However, I am of the view that if the landlord considered this to be a significant risk to the landlord's property, the landlord would have acted upon it as soon as she became aware of the matter in September 2021 rather than wait several months in order to "see what the tenant was like".

The landlord indicated that it would be satisfactory to rectify this violation by the tenant providing the landlord with the keys necessary to open the tenant's door and I have issued such an order to the tenant during the hearing and as reflected in the orders below.

Breach of a material term

In order to end a tenancy for breach of a material term, the landlord must prove a number of things: that the tenant is in breach of a material term of the tenancy agreement; that the landlord issued a written notice to the tenant concerning the breach of the material term; and, the tenant failed to correct the breach within a reasonable amount of time after receiving the written notice.

In this case, the landlord's admissible evidence did not include a copy of the tenancy agreement and its addendum so that the tenant and I may review the term(s) and determine whether they are material terms. Nor, did the landlord provide admissible evidence that included copies of the breach letters.

Residential Tenancy Policy Guideline 8 provides information and policy statements with respect to ending a tenancy for breach of a material term. The policy guideline

describes what a “material term” is versus other types of terms. The policy guideline also describes the information that should be included in the breach letter, as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;*
- that they believe the problem is a breach of a material term of the tenancy agreement;*
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- that if the problem is not fixed by the deadline, the party will end the tenancy.*

I find it is reasonable to expect that in describing the problem in the breach letter, the landlord would point to the specific term in the tenancy agreement or its addendum that the tenant is allegedly violating and specify the action required of the tenant to “rectify” the breach especially where more than one option exists. The landlord orally described the content of the breach letters during the hearing but in most cases the landlord did not specify the action required of the tenant to “rectify” the breach. For example, with respect to the tenant changing the locks, this could be rectified by giving the landlord a copy of the key to the locks or changing the locks back to the landlord’s original locks. The landlord did not specify which action would be satisfactory to correct the breach.

Given the above, I find the landlord did not provide sufficient evidence to satisfy all three criteria for ending a tenancy for breach of a material term. The landlord did not establish that the tenant was in breach of a material term; that a valid breach letter was given to the tenant; and, that the breach was not corrected within a reasonable time after the tenant received notification of the breach. Therefore, I decline to uphold the 1 Month Notice for breach of a breach of a material term.

Failure to pay pet damage deposit within 30 days

To end a tenancy for failure to pay a pet damage deposit, the landlord must demonstrate the tenant failed to pay the required amount of the pet damage deposit within 30 days as required within the tenancy agreement.

In this case, it was agreed that the tenant did pay a pet damage deposit; however, the landlord was uncertain as to how much was paid and when.

The tenancy agreement and its addendum were not before me. As such, it is unclear to me the amount of a pet damage deposit that would be required.

As for the date the payment is due, a landlord may only collect a pet damage deposit when the tenancy forms or when the landlord gives permission to the tenant to have a pet, as provided under section 20(c) of the Act which I reproduce below:

20 A landlord must not do any of the following:

(c) require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

I did not hear that a pet damage deposit was due at the time the tenancy formed as there was no evidence to suggest the tenant had a pet when the tenancy formed.

It was agreed by both parties that the landlord did not give the tenant written permission to acquire a pet; however, the landlord did ultimately accept a pet damage deposit from the tenant. If the landlord did not give any permission to the tenant to have a pet then the landlord would not be permitted to collect or accept a pet damage deposit under section 20 of the Act.

Since the landlord accepted a pet damage deposit from the tenant, I am of the view the landlord's consent was implied by her decision to accept the pet deposit and I find the landlord is now estopped from trying to end the tenancy for the tenant having a pet or failing to pay a pet damage deposit.

In light of all of the above, I find the landlord failed to provide sufficient evidence in support of ending the tenancy based on the 1 Month Notice issued on May 26, 2022. Therefore, **I grant the tenant's request for cancellation of the 1 Month Notice and the tenancy continues at this time.**

Despite cancelling the 1 Month Notice, having heard from both parties, the tenant appears to not be familiar with all of the terms of his tenancy agreement, including the addendum, and does as he chooses and then waits for the landlord to issue a breach letter. Undoubtedly, this will inevitably result in future conflict and disputes between the parties. The tenant claims he does not have a copy of the addendum and with a view to

avoiding future disputes I issue orders to the parties pursuant to section 62(3) of the Act.

Orders to the parties

I order the following:

- 1. I order the tenant to provide the keys necessary to open the rental unit door to the landlord within three days of the hearing date by depositing them in the landlord's drop box, as agreed during the hearing.**
- 2. The landlord shall deliver to the tenant a copy of the addendum that accompanies the tenancy agreement, within one week of receiving this decision.**
- 3. The tenant must read and become familiar with the terms in the tenancy agreement and the addendum in a timely manner and is expected to comply with the terms.**
- 4. Given the risk of fire, contamination from oil, gas and/or grease from motorcycles stored in the rental unit, not to mention the inappropriateness of it, I order the tenant to ensure that at no time is a motorcycle brought into the rental unit or other indoor areas.**

As I stated during the hearing, a landlord is entitled to enter a rental unit for various reasons under the Act (section 29). Accordingly, the landlord must have a means to access the rental unit. **Failure of the tenant to deliver the landlord a copy of the keys to open the rental unit door, as ordered, shall be grounds for the landlord to end the tenancy for the tenant's failure to comply with the order of the Director.** In addition, if the tenant does not provide the landlord with a copy of keys for the rental unit locks, as ordered, the landlord is hereby authorized to change the locks to the rental unit and deduct the cost to do so from the tenant's security deposit to recover the cost from the tenant.

Conclusion

The 1 Month Notice is cancelled and the tenancy continues at this time.

I have issued orders to both parties in this decision. Failure of the tenant to comply with my order to provide copies of keys to the locks on the rental unit door are accompanied by significant consequences, including issuance of another 1 Month Notice for failure to comply with an order of the Director.

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 25, 2022

Residential Tenancy Branch