



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K-TANG ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was reconvened from a hearing on November 14, 2022 regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- disputing a One Month Notice to End Tenancy for Cause dated August 4, 2022 (the "One Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The original hearing resulted in an interim decision dated November 14, 2022 (the "Interim Decision"). This decision should be read together with the Interim Decision.

The Landlords' agents ET and AG attended this reconvened hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 10:21 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlords' agents and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Notice for Reconvened Hearing

Records of the Residential Tenancy Branch indicate that the notice of hearing and Interim Decision were mailed to the Tenant on November 17, 2022. As such, I find the

Tenant was sufficiently served with notice of this reconvened hearing on November 22, 2022 pursuant to sections 71(2)(b) and 90(a) of the Act.

Preliminary Matter – Service of Evidence

ET confirmed that he provided a copy of the Landlord's evidence to the Tenant as instructed in the Interim Decision and re-uploaded the evidence to the Residential Tenancy Branch. Based on ET's testimony, I find the Tenant was sufficiently served with the Landlord's evidence pursuant to section 71(2) of the Act.

Preliminary Matter – Tenant's Non-attendance

Rule 7.10 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states:

7.10 Mandatory attendance

If the dispute resolution hearing is adjourned, the arbitrator will order the parties to attend on the date when the dispute resolution hearing will be reconvened.

If a party does not attend the reconvened hearing at the scheduled time, the arbitrator may commence, continue and conclude the hearing. Pursuant to Rule 7.3, the arbitrator may issue a decision and order in the absence of a party.

Having found the Tenant to be deemed served with notice of this reconvened hearing, I directed the hearing to continue and be concluded in the Tenant's absence.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on December 1, 2016 and is month-to-month. Rent is currently \$1,085.00 due on the first day of each month. The Tenant paid a security deposit of \$500.00.

The One Month Notice being disputed in this application is a document titled "Termination Notice to Tenant". This notice states that it is a "ONE MONTH NOTICE" under "Section 27" of the "Residential Tenancy Act of B.C. 1984 as amended". The One Month Notice is signed by AG on behalf of the Landlord and has an effective date of September 5, 2022. The stated reasons for terminating the tenancy are as follows:

- the tenant, or a person permitted in or on the residential property or residential premises by him, has caused extraordinary damages to the residential premises or the residential property
- occupancy by the tenant has resulted in the residential property or residential premises being damaged to an extent that exceeds reasonable wear and tear and the tenant has failed within reasonable time after the damage occurred to take the necessary steps to repair the damage
- the tenant has breached a reasonable material term of the tenancy agreement and has failed to rectify the breach within a reasonable time after receiving written notice to do so from the landlord
- the tenancy agreement has been frustrated (the performance of the contract is impossible due to external causes)
- the residential premises must be vacated to comply with an order by a Provincial, regional or municipal government authority respecting zoning, health, safety, building or fire prevention standards

The One Month Notice includes the following particulars of termination (partially redacted for privacy):

*WITH ALL THE DEBREE (sic) IN THE UNIT [the Tenant] HAS FALLEN
SEVERAL TIMES SHE REFUSED ALL HELP OFFERED JUST GOT WORSE
AND WORSE SHE NEVER CLEANED UP THE KITCHEN OR STOVE,
HALLWAY*

The Tenant's application indicates the Tenant received a copy of the One Month Notice on August 5, 2022. ET confirmed he and AG served the Tenant with a copy of the One Month Notice in person.

The Landlord's evidence is that a fire broke out in the rental unit on July 21, 2022, which was caused by the Tenant's accumulation of flammable substances in the rental unit, including homemade alcohol, open bottles of wine and liquor, cigarettes, and other materials.

ET testified that there were a series of broken promises by the Tenant to repair the damage and clean up the rental unit. ET referred to signed notes from the Tenant signed in September and October 2022.

The Landlord submitted photographs of the rental unit taken during inspections on August 4, 2022, September 13, 2022, October 1, 2022, and most recently on October 17, 2022. The photographs show clutter in the rental unit as well as damage from the fire in the kitchen. The photographs also show a large stain on the bathroom floor.

ET testified that the Tenant has not cleaned up or repaired the damage in the rental unit. ET testified the Tenant has been given many chances. ET stated that the condition of the rental unit represents a serious fire hazard to other residents of the building.

In the original hearing which the Tenant attended, the Tenant testified that the stain on the bathroom floor was caused by nail polish. The Tenant disagreed with the state of the rental unit as shown in the photos and did not agree that it was a fire hazard to the building. The Tenant stated that the condition of the rental unit is better than it had been.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

In this case, I find the One Month Notice is likely an outdated form from the Residential Tenancy Branch under the 1984 version of the Act. I find that despite not being the current form, the One Month Notice is signed and dated by AG on behalf of the Landlord, gives the address of the rental unit, states the effective date, and states the grounds for ending the tenancy which for the most part correspond to the grounds in the current version of the Act.

Section 10 of the Act states:

Director may approve forms

- 10(1) The director may approve forms for the purposes of this Act.
- (2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

I find the deviations on the One Month Notice due to it being an outdated form do not affect its substance in the circumstances and are not intended to mislead. Therefore, I conclude that the One Month Notice is a valid notice to end tenancy under sections 52 and 10(2) of the Act.

Based on the parties' evidence, I find the Tenant was served with a copy of the One Month Notice in accordance with section 88(a) of the Act on August 5, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until August 15, 2022 to dispute the One Month Notice. Records indicate that the Tenant

made this application on August 15, 2022. I find the Tenant made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, I find the grounds stated in the One Month Notice correspond to those under sections 47(1)(f), (g), (h) and (k) of the Act, which state as follows:

Landlord's notice: cause

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

[...]

(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;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

[...]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

[...]

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

I note that section 47 does not deal with frustration of a tenancy, which is addressed under section 56.1 of the Act.

Based on the evidence before me, I find that a fire occurred in the rental unit on July 21, 2022, which was caused by the Tenant's accumulation of flammable substances and clutter in the rental unit.

I find that photographs of the kitchen dated September 13 and October 17, 2022 submitted by the Landlord show the following damage from the fire:

- the kitchen cabinets are charred black
- there is damage to the kitchen floor and as well as burnt clutter on the floor
- the kitchen counter and sink are covered in piles of burnt dishes and other clutter, and there is visible damage to the countertops underneath

Section 32(3) of the Act states that “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”.

In this case, I find the damage in the kitchen was caused by the actions or neglect of the Tenant. I find the Tenant is obligated to repair this damage under section 32(3) of the Act.

Moreover, I find the Tenant signed a note dated October 3, 2022 acknowledging that the kitchen is a “first priority” and “to be completed this week I hope”. I find the Tenant signed other notes in September 2022 agreeing to clean up the rental unit.

I accept the Landlord’s evidence that the Tenant has not repaired the damage as of the date of the reconvened hearing. I find there is insufficient evidence to suggest that the Tenant had initiated any repairs to the kitchen as of the date of the reconvened hearing. I find the Tenant has had roughly four months since the fire occurred to repair the damage, and more than one month from the date that she signed the note on October 3, 2022.

Based on the foregoing, I conclude the Tenant has not repaired damage to the rental unit as required under section 32(3) of the Act, within a reasonable time. As such, I find the Landlord has established cause for ending the tenancy under section 47(1)(g) of the Act. I find it is not necessary in the circumstances to consider whether the Landlord has also established cause under sections 47(1)(f), (h), and (k) of the Act.

The Tenant’s claim to dispute the One Month Notice is dismissed without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to be a valid notice to end tenancy under sections 52 and 10(2) of the Act, and having dismissed the Tenant's claim to dispute the One Month Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

The corrected effective date of the One Month Notice, or September 30, 2022, has already passed. I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant.

3. Is the Tenant entitled to recover the filing fee?

The Tenant has not been successful in this application. I decline to award the Tenant reimbursement of her filing fee under section 72(1) of the Act.

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 28, 2022

Residential Tenancy Branch