Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR CNC MNDCT RR OLC FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- cancellation of a Ten Day Notice for Unpaid Rent and/or Utilities dated August 5, 2022 ("10 Day Notice") pursuant to section 46;
- cancellation of a One Month Notice to End Tenancy for Cause dated May 11, 2022 ("1 Month Notice") pursuant to section 47;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or tenancy agreement pursuant to section 62;
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65;
- an order to seek a monetary order for compensation from the Landlord pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The original hearing of the Application was held on October 3, 2022 ("Original Hearing"). The Landlord and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Original Hearing was scheduled for one hour and there was not sufficient time to take all the parties' testimony and allow rebuttals at the Original Hearing. Pursuant to

Rule 7.8 of the RoP, I adjourned the Original Hearing and issued a decision dated October 4, 2022 ("Interim Decision"). The Interim Decision stated the Landlord and Tenant were not permitted to serve each other, or submit to the Residential Tenancy Branch ("RTB"), any additional evidence. The Interim Decision and Notices of Dispute Resolution for the adjourned hearing, scheduled for October 27, 2022 ("Adjourned Hearing"), were served on the parties by the RTB. The Landlord and Tenant attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding

At the Original Hearing, the Tenant stated she served the Notice of Dispute Resolution Proceeding and most of her evidence ("NDRP Package") on the Landlord by email on June 8, 2022. Paragraph 55 of the tenancy agreement provides the Landlord and Tenant may serve each other with documents by email. The Landlord acknowledged he received the NDRP Package by email.

Sections 43 and 44 of the Regulations states:

43 (1) For the purposes of section 88 (j) *[how to give or serve documents generally]* of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

(2) For the purposes of section 89 (1) (f) *[special rules for certain documents]* of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

(3) For the purposes of section 89 (2) (f) of the Act, the documents described in section 89 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.

> 44 A document given or served by email in accordance with section 43, unless earlier received, is *deemed to be received on the third day after it is emailed*.
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> [emphasis in italics added]

I find the NDRP Package was served by the Tenant on the Landlord pursuant to the provisions of section 43(1) and 43(2) of the Regulations and sections 88 and 89 of the Act. Pursuant to section 44 of the Regulations, I find the Landlord was deemed to have been served with the NDRP Package three days after it was sent to the Landlord by email, being June 11, 2022.

Preliminary Matter – Service of Tenant's Amendment on Landlord

The Tenant stated she served an amendment ("Amendment"), dated September 19, 2022, on the Landlord by email on September 21, 2022. As noted above, paragraph 55 of the tenancy agreement provides the Landlord and Tenant may serve each other with documents by email. Pursuant to section 44 of the Regulations, the Amendment was deemed to have been received by the Landlord three days after it was sent by email, being September 22. 2022. Rule 4.6 of the RoP states:

> **4.6 Serving an Amendment to an Application for Dispute Resolution**
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> As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.
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> The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.
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> In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) *not less than 14 days before the hearing.*
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> [emphasis in italics added]

For the purposes of calculating days, the definitions set out in the RoP states that:

> Days
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> a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
> b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
> c) *In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.*
> d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.
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> [emphasis in italics added]

Based on the foregoing, the Amendment was not served on the Landlord at least 14 days before the hearing and, therefore, it was not served in accordance with the provisions of the RoP. As such, I am unable to consider the claims set out in the Amendment.

Preliminary Matter – Addition of Claim to Application

As noted above, I am unable to consider the claims made by the Tenant in the Amendment. One of the claims made by the Tenant in the Amendment was to seek cancellation of the 10 Day Notice. The records of the RTB disclose the Tenant did not dispute the 10 Day Notice and the Landlord made an Application for Dispute Resolution by Direct Request ("DR Application") in which the Landlord sought an Order of Possession. In a decision, dated September 28, 2022, the adjudicator who reviewed the DR Application dismissed the DR Application with leave to reapply on the basis that there was no evidence the Notice of Dispute Resolution Proceeding for the DR Application was served on the Tenant. As the Adjudicator dismissed the DR Application with leave to reapply, the Landlord has the option of making a new application for dispute resolution to seek an Order of Possession and a monetary order for unpaid rent based on the 10 Day Notice.

Section 64(3)(c) of the Act states:

> 64(3) Subject to the rules of procedure established under section 9 (3) *[director's powers and duties]*, the director may
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> (a) deal with any procedural issue that arises,
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> (b) make interim or temporary orders, and
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> (c) amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Rule 1.1 of the RoP states:

> **1.1 Objective**
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> The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

The Landlord has already attempted to seek an Order of Possession and monetary order for unpaid rent based on the 10 Day Notice. The Tenant made a claim to dispute the 10 Day Notice in the Amendment that I cannot consider as the Amendment was filed too late to comply with the requirements of Rule 4.6. However, as stated in Rule 1.1, the objective of the Rules of Procedure are to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. As each of the parties have already attempted to deal with the 10 Day Notice, I find that procedural fairness warrants that I consider whether the 10 Day Notice should be cancelled or, if the 10 Day Notice is not cancelled, whether the Landlord is entitled to an Order of Possession and monetary order for unpaid rent pursuant to sections 55(1) and 55(1.1) of the Act. As such, pursuant to section 64(3)(c) of the Act, I order that the Application be amended to add a claim that the Tenant is seeking cancellation of the 10 Day Notice.

Preliminary Matter – Service of Tenant's Additional Evidence on Landlord

The Tenant stated she served additional evidence on the Landlord by email on September 19, 2022. This evidence consisted of a copy of the 10 Day Notice, 1 Month Notice and a Monetary Order Worksheet on Form RTB-37. Rules 3.14 of the Rules states:

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 Tenant served her additional evidence less than 14 clear days before the hearing. As the Landlord prepared and served the Tenant with the 10 Day Notice and 1 Month Notice, I will accept the 10 Day Notice and 1 Month Notice into evidence. However, I will not accept the Monetary Order Worksheet into evidence for this proceeding as it was served not less than 14 days before the hearing.

Preliminary Matter – Service of Landlord's Evidence on Tenant

The Tenant stated he served his evidence on the Tenant by email. The Tenant denied she received the Landlord's evidence.

Rule 3.15 of the RoP states:

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. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.
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> See also Rules 3.7 and 3.10.

The Landlord submitted numerous evidence files to the RTB and stated he served copies of them on the Tenant. The Tenant denied she received the Landlord's evidence by email. The Landlord did not provide a copy of the email he sent to the Tenant with his evidence or any evidence that his evidence was served on the Tenant by another method such as a Canada Post receipt for registered mail service or a witness statement attesting that the witness was present when the Landlord served his evidence on the Tenant or on the Tenant's door. Based on the foregoing, I find, on a balance of probabilities, that the Landlord's evidence was not served on the Tenant. As such, I find the Landlord's evidence is not admissible for this proceeding.

Preliminary Matter at Original Hearing – Severance and Dismissal of Tenant's Claim

The Application included claims for (i) an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement; (ii) an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord; and (iii) an order to seek a monetary order for compensation (collectively the "Other Claims").

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states:

> **2.3 Related issues**
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> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. As such, I will sever the Other Claims from the Application. After determining whether the Landlord is entitled to an Order of Possession based on the 10 Day Notice or 1 Month Notice, I will dismiss the Other Claims, with or without leave to reapply to reapply, as appropriate.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 10 Day Notice?
- Is the Tenant entitled to cancellation of the 1 Month Notice?
- Is the Tenant entitled to recover the filing fee for the Application from the Landlord?
- If the Tenant is not entitled to cancellation of the 1 Month Notice or the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

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

The Tenant submitted into evidence a signed copy of the tenancy agreement ("Tenancy Agreement"), dated July 9, 2020, between the Landlord, the Tenant and her co-tenant ("Co-Tenant"). The Tenancy Agreement states the tenancy commenced on September 1, 2020, on a year-to-year basis, with rent of $2,400.00 payable on the 1st day of each month. The Tenant and Co-Tenant were required to pay a security deposit of $2,400.00 upon execution of the Tenancy Agreement. The Tenant admitted receiving a Notice of Rent Increase that increased the rent to $2,436.00 per month commencing on April 1, 2022. The Landlord stated he received the security deposit of $2,400.00 and that he was holding it in trust for the Tenant and Co-Tenant. Based on the foregoing, I find there is a tenancy between the Landlord, Tenant and Co-Tenant and that I have jurisdiction to hear the Application. The Tenant stated she is occupying the rental unit. The Landlord stated the Tenant has not paid the rent for October 2022. The Tenant stated she was unaware the rent had not been paid for October 2022.

The Landlord stated he served the 10 Day Notice on the Tenant's door on August 5, 2022. The Tenant admitted receiving the 10 Day Notice. I find the 10 Day Notice was served pursuant to the provisions of section 88 of the Act. The 10 Day Notice stated the Tenant had rental arrears of $111.86 as of June 9, 2022 arising from the Tenant's failure to pay the utilities. The Landlord stated paragraph 37 of the tenancy agreement required the Tenant to pay 1/3 of the gas, hydro and water utilities. The Tenant did not dispute that she was responsible for the payment of 1/3 of the gas, hydro and water utilities.

The Tenant stated she overpaid the security deposit by $1,200.00 as the Act only required her and the Co-Tenant to pay ½ of the monthly rent as a security deposit. The Tenant stated she emailed the Landlord with instructions that he was to deduct any shortfall in the rent or utilities from the $1,200.00 overpayment of the security deposit. The Landlord acknowledged he received the email from the Tenant instructing him to deduct any shortfalls in rent or utilities from the security deposit.

The Landlord stated he served the 1 Month Notice on the Tenant's door on May 11, 2022. The Tenant admitted receiving the 1 Month Notice. I find the 1 Month Notice was served pursuant to the provisions of section 88 of the Act. The 1 Month Notice stated the causes for ending the Tenancy were:

> Tenant has allowed an unreasonable number of occupants in the unit/site/property/park
- Tenant is repeatedly late paying the rent;
- 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 or safety or lawful right of another occupant or the landlord
    - Put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord

The 1 Month Notice provided the following details on the causes for ending the tenancy:

> [The Tenant] have been late in rent payments on 9 occasions in last 15 month, I have received rents late as follow: Feb03/2021, May02/2021, Aug02/2021, Sep03/2021, Oct02/2021, Oec02/2021, FebOJ/2022 and 29 days late Apr29/2022 and 11 days late n May11/2022.

[The Tenant} hosted a party on Aprl0612022 with number of people attending. tney set a tenl in backyard and they engaged In drinking excessive alcohol and illegal activities such as doing drugs, and sexual activities which was loud and visible by neighbours with small children in their house, which called me to report while 1 was In Turkey. but they are afraid of her reaction to testify against her publicly. This is clear violation of our rental agreement section (38. [The Tenant] is the only occupant of the suite and any long term stay require written approval of landlord. No large party without pennlss\on of landlord.) It Also puts the life and safety of other residence of the house at risk and the potential risk of damages to the property by drunk and drugged up guests of the party out of control and also disturb the peace and enjoyment of neighbours as this party was going wlkl till 1 AM.

[The Tenant] repeatedly ignored my request to respect the agreement she signed Section 6, to respect our life expectancy and health by not smoking under our windows which ls directly above her deck which she smoke all day long in summer and winter. (6. The Tenant and members of Tenant's household will not smoke anywhere in the Property nor permit any guests or visitors to smoke In the Property.)

[The Tenant] repeatedly ignores the request to park her vehicle in her designated spot and purposefully blocks the escape way necessary for occupant of the house to escape in case of emergency such as fire or earthquake and tsunami as the house Is aterfront By doing so, she is putting the life of other occupants of the house In real danger if such unfortunate incident occurs.

On Oec20/2020 [The Tenant] left Victoria far Toronto and didn't returned tilt JanOS/2021 which she contacted me on whatsapp as I was in Alberta working and she reported her fridge stopped working when she was away and all her food is gone bad and water an the floor damaged the floor. She has violated another term of contract and caused a damage to the floor, She repeated again in late Apr20/2022 by going to Toronto without assigning anyone for regular inspection of the house and violating Section 45 of rental agreement (45. If the Tenant *is* absent from the Property and the Property fs unoccupied for a period of 4 consecutive days or longer, the Tenant will arrange for regular inspection by a competent person. The Landlord will be notified In advance as ta the name, address and phone number of the person doing the inspections.)

Before signing the contract [The Tenant] asked me [Name of Landlord] which days she is allowed to use the laundry and I responded by saying 2 to 3 loads of laundry per week. She agreed and signed but later on she was using the laundry for roughly 2 days a eek all day long and when I asked her to be mindful about excessive use of energy, she got extremely angry and hostile and refuse to limit her use to one day per week and ended the conversation by saying that she doesn't need to be lectured on how to do laundry and she will do it whenever she wants ta as many times as she wants to. Violation of Section 50 of rental agreement. (50. The Tenant wilt not perform any activity on the Property that the Landlord feels significantly increases the use of electricity. heat, water, sewer or other utilities on the Property.)

May 06/2022 [The Tenant] asked me by Email, why I lock my door which is between the laundry room and my house? And why I don't let her to use my vacuum and cleaning tools and product? I responded that she is being very hostile towards me and I need to feel safe In my house and she Is not entiHed to use my cleaning products and vacuum. She responded by saying she Is going to change her lock as well to restrict my access to her space. Violating Section 61 rental agreement (61. locks may not be added or changed without the prior written agreement of both Parties, or unless the changes are made in compliance with the Act.)

29fApr/2022 I asked [The Tenant] to return the key to the outside shed, which I gave her to store her bicycle Instead of bringing it inside her suit and damage the walls, door and fumiture and make the floor dirty etc. But she never used the shed and continued bringing dlrty bicycle inside the house.

The Landlord testified the Tenant was late paying the rent on February 3, 2021, May 2, 2021, August 2, 2021, September 3, 2021, October 2, 2021, December 2, 2021, February 3, 2022, April 29, 2022 and May 11, 2022. The Tenant denied she was late nine times but admitted that she was late on at least three occasions since the tenancy commenced. The Tenant stated the other Co-Tenant was responsible for paying the rent. The Tenant did not submit any evidence to demonstrate the dates of the late payments provided by the Landlord was incorrect or that the rent had been paid in full for one or more of those date. The Tenant did not provide any reasons for the rent being paid late, such an error made by the financial institution through which the rent payments were made by the Tenant and the Co-Tenant to the Landlord.

Analysis

1. Ten Day Notice to End Tenancy

The Tenant stated she

Sections 19, 26(1) and 46 of the Act state:

19(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

The 10 Day Notice stated the Tenant had rental arrears of $111.86 as of June 9, 2022 arising from the Tenant's failure to pay the utilities. The Tenant stated she paid a security deposit of $2,400.00 when the Act provides the Landlord was only entitled to require an amount equal to ½ of one month's rent, being $1,200.00. The Tenant stated she emailed the Landlord and instructed him to deduct any shortfall in the rent or utilities from the $1,200.00 overpayment of the security deposit. The Landlord violated the provisions of section 19(1) of the Act that provide a landlord must not accept a security

deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement. The Landlord acknowledged he received a security deposit of $2,400.00 while he was only entitled to a security deposit of $1,200.00. The Landlord acknowledged he received an email from the Tenant instructing him to deduct any shortfalls in rent or utilities from the excess $1,200.00 he was holding. Based on the testimony of the parties, I find the Landlord was instructed by the Tenant to deduct the shortfall of $111.86 from the excess $1,200.00 security deposit he was holding. Based on the foregoing, I find the 10 Day Notice was not effective when it was served on the Tenant and the Landlord is not entitled to seek the end of the tenancy pursuant to the 10 Day Notice pursuant to section 46(1) of the Act. I note that, as the 10 Day Notice was ineffective, it is unnecessary for me to consider whether the Tenant made an application to dispute the 10 Day Notice was made within the 5-day dispute period provided for by section 46(4) of the Act. As it was unnecessary for the Tenant to dispute the 10 Day Notice, I dismiss her claim for an order cancelling the 10 Day Notice.

2. One Month Notice to End Tenancy

Subsections 47(1)(b), 47(1)(c), 47(1)(d) and 47(1)(e)(ii) and section 47(4) state:

> 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
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> […]
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> (b) the tenant is repeatedly late paying rent;
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> (c) there are an unreasonable number of occupants in a rental unit;
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> (d) the tenant or a person permitted on the residential property by the tenant has
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> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
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> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
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> (iii) put the landlord's property at significant risk;
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> (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
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> […]
>
> (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

[…]

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

The Landlord stated he served the 1 Month Notice on the Tenant's door on May 11, 2022. The Tenant acknowledged she received the 10 Day Notice. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 1 Month Notice, three days after the 1 Month Notice was served on the Tenant's door, being May 14, 2022. Pursuant to section 47(4) of the Act, the Tenant had 10 days, or until May 24, 2022, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the Residential Tenancy Branch indicate the Tenant made the Application on May 23, 2022. As such, the Tenant made the Application within the 10-day dispute period required by section 47(4) of the Act.

Subsection 26(1) of the Act makes it clear that payment of rent when it is due is a material term of a tenancy is mandatory unless the tenant has a right under the Act to deduct all or a portion of the rent. The Landlord stated the Tenant was late paying the rent on February 3, 2021, May 2, 2021, August 2, 2021, September 3, 2021, October 2, 2021, December 2, 2021, February 3, 2022, April 29, 2022 and May 11, 2022.

At the hearing, the Tenant denied she was late paying the rent on the dates the Landlord stated but admitted she had been late on three occasions. However, in the Tenant's written submissions for this hearing the Tenant stated "I agree that I was late paying rent on the dates indicated". The Tenant did not provide any testimony or evidence that she and the Co-Tenant had a right under the Act to deduct all or a portion of the rent other than for the overpayment of the security deposit by $1,200.00. Although the Landlord was holding $1,200.00 in excess of the amount of a security deposit he was entitled to, the excess was only ½ of the rent of $2,400.00 owing for the months of September 2020 through March 2021 and less than ½ of the rent of $2,436.00 for the month of on April 2022 and thereafter. As such, the Tenant and Co-Tenant were late paying the rent on the dates stated by the Landlord, even after deducting the excess security deposit the Landlord was holding on the date of each of the late rental payments. Based on the foregoing, I find the Tenant and Co-Tenant paid the rent late on nine occasions from February 3, 2021 through May 11, 2022.

The Tenant argued that the Co-Tenant was responsible for paying the rent. *Residential Tenancy Policy Guideline 13* ("PG 13") clarifies the rights and responsibilities relating to multiple tenants renting a rental unit or manufactured home site under a single tenancy agreement. PG 13 states in part:

> **B. TENANTS AND CO-TENANTS**
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> A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. *There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.*
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> **C. PAYMENT OF RENT**
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> *Co-tenants are jointly and severally responsible for payment of rent when it is due.* Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay $1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. *If Susan is unable to pay her portion of the rent, John must pay the full amount.* If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. *The onus is on the tenants to ensure that the full amount of rent is paid when due.*
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> [emphasis in italics added]

As stated in PG 13, co-tenants are jointly and severally responsible for payment of rent when it is due. I find the Tenant was equally responsible for paying the rent when it was due as her Co-Tenant. A landlord is not required to pursue tenants for payment of rent when it is due. Based on the foregoing, I find the Tenant was not excused from paying the rent on the basis that her Co-Tenant failed to do so.

Residential Tenancy Policy Guideline 38 ("PG 38") provides guidance for landlords who seek to end a tenancy where the tenant is repeatedly late paying the rent. PG 13 states:

> Three late payments are the minimum number sufficient to justify a notice under these provisions.
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> It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late
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> A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.
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> In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent. Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

In the decision for *Guevara v. Louie*, 2020 BCSC 380 (CanLII) ("Guevara"), the BC Supreme Court considered an application for dispute resolution in which a landlord sought to end a tenancy for caused based on the tenant being repeatedly late paying the rent. In that decision, the Honourable Mr. Justice Sewell stated in part:

> [49] The central issue between the parties before the Arbitrator was whether Ms. Guevara had been "repeatedly late" in paying her rent, as that phrase is used in s. 47(1)(b) of the *RTA*:
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> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> (b) the tenant is repeatedly late paying rent;
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> [53] The Arbitrator recognized that ending a tenancy is a significant request that must only be done in accordance with the *RTA*. However, his analysis went no further than to refer to Guideline 38 of the *Residential Tenancy Branch Policy Guidelines* which states that the *minimum* number of late payments required to justify a notice for termination under the *RTA* provisions is three. Therefore, *Guideline 38 gives little real guidance on the manner in which the provision should be applied to the circumstances of this case.*

> [54] In my view, the Arbitrator failed completely to consider or apply the modern principle of statutory interpretation to his consideration of s. 47(1)(b) of the *RTA* and its application to the circumstances of Ms. Guevara*. At a minimum, the Arbitrator was required to consider the context and purpose of s. 47 and adopt an interpretation consistent with those factors.*
>
> [55] Section 47 sets out a number of grounds on which a landlord may rely upon to terminate a tenancy. *A review of all of the grounds on which a tenancy may be terminated under s. 47 makes it apparent that the tenant must have engaged in serious misconduct that seriously affected the landlord* or the other tenants of the building in which the premises are located, failed to comply with a condition precedent to the rental agreement coming into effect (s. 47(1)(a)) or *have taken an unreasonable amount of time to comply with a material term of the tenancy agreement.*
>
> [56] In addition, the Arbitrator appeared to give no consideration to the circumstances relating to the defaults he found to have occurred. Beyond noting that three late payments of rent were the minimum number to engage s. 47(1)(b), he did not address the frequency of the defaults in the context of the length of the tenancy, *the length of the default*, or the expectations of the parties. He did not give full consideration to the content of the communications between the parties in respect of any of the defaults—such as Ms. Louie indicating that she was okay with receiving late rental payments on several occasions and several discussions of banking errors arising from the e-transfer format—aside from concluding that Ms. Louie was forced to follow up with Ms. Guevara when rent was not paid on time. *In my view, that approach fell so far short of the required standard of statutory interpretation as to render the decision patently unreasonable.*
>
> [emphasis in italics added]

As stated in the *Guevara* decision, the grounds for ending a tenancy for cause set out in section 47 of the Act require that the tenant has engaged in serious misconduct that seriously affected the landlord or other tenants or that the tenant has taken an unreasonable amount of time to comply a material term of the tenancy agreement. In the present case, the Tenant and Co-Tenant were late paying the rent for nine times during a period of 15 months. Furthermore, the rent for April 2022 was 28 days late and the rent for May 2022 was 11 days late. As such, I find the Tenant and Co-Tenant were not only late paying the rent more than three times, but they took unreasonable amounts of time to make the most recent two late payments of rent.

In Guevara, the Honourable Mr. Justice Sewell also stated in part:

> [62] ... Therefore, the proper question was whether Ms. Louie could rely on past instances of rent not being paid on the first of the month to terminate the tenancy agreement when for years she had acquiesced in the manner that rent was paid. Specifically, had Ms. Louie represented through her conduct and communications that she did not require strict compliance with the term of the tenancy agreement stating that rent must be paid on the first day of the month.
>
> [63] While the legal test of waiver requires a "clear intention" to "forgo" the exercise of a contractual right, the equitable principle of estoppel applies where a person with a formal right "represents that those rights will be compromised or varied:" *Tymchuk v. D.L.B. Properties,* 2000 SKQB 155 at paras. 11-17. Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather "whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it:" *Bowen v. O'Brien Financial Corp.,* 1991 CanIII 826 (BC CA), [1991] B.C.J. No. 3690 (C.A.)...
>
> [65] The following broad concept of estoppel, as described by Lord Denning in *Amalgamated Investment* & *Property* Co. *(In Liquidation) v. Texas Commerce International Bank Ltd.* (1981), [1982] Q.B. 84 (Eng. C.A.), at p. 122, was adopted by the Supreme Court of Canada in *Ryan v. Moore,* 2005 SCC 38 at para. 51:
>
> > ... When the parties to a transaction proceed on the basis of an underlying assumption - either of fact or of law - whether due to misrepresentation or mistake makes no difference - on which they have conducted the dealings between them -neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.
>
> [66] The concept of estoppel was also described by the BritishColumbia Court of Appeal in *Litwin Construction (1973) Ltd. v. Pan* 1988 CanIII 174 (BC CA), [1998] 29 B.C.L.R. (2d) 88 (C.A.), 52 D.L.R. (4th) 459, more recently cited with approval in *Desbiens v. Smith,* 2010 BCCA 394:
>
> > ... it would be unreasonable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment ..." [emphasis added]. That statement was affirmed by the English Court of Appeal in *Habib Bank* and, as we read the decision, accepted by that Court in *Peyman v. Lanjani,* [1984], 3 All E.R. 703 at pp. 721 and 725 (Stephenson L.J.), p. 731 (May L.J.) and p. 735 (Slade L.J.).
>
> [

> 67] … I find that Ms. Louie was required to give the Ms. Guevara reasonable notice that strict compliance would be enforced, before taking steps to terminate the residency for late payment. Such notice was not provided.
>
> [68] Estoppel has been a fundamental principle of the law for a long time: see *Hughes v. Metropolitan Railway* Co. (1877), 2 App. Cas. 439. However, the Arbitrator failed to address this fundamental principle in his reasons. By so doing he deprived Ms. Guevara of the right to show that in the circumstances of the application before him it would have been unjust to permit Ms. Louie to terminate the tenancy agreement given the long course of conduct in which she acquiesced.

In the *Guevara*, the landlord's acquiescence accepting late payments from the tenant had occurred *over a period of years*. In the current dispute before me, the nine late payments of rent occurred over a 15-month period. As such, I find the Landlord was not required to give the Tenant and Co-Tenant a written notice demanding the Tenant and Co-Tenant pay the rent on time before serving the 1 Month Notice.

Based on the foregoing, I find the Landlord has demonstrated, on a balance of probabilities, that he had cause to end the tenancy pursuant to subsection 47(1)(b) of the Act. I dismiss the Tenant's claim to dispute the 1 Month Notice. As I have found the Landlord has proven cause to end the tenancy pursuant to section 47(1)(b), it is unnecessary for me to consider whether the Tenant is breach of any of subsections 47(1)(c), 47(1)(d) or 47(1)(e)(ii) of the Act.

I have dismissed the Tenant's dispute of the 10 Day Notice on the basis that it was not necessary to dispute the 10 Day Notice as it was not effective when it was served by the Landlord. I have dismissed the Tenant's claim to dispute the 1 Month Notice as the Landlord has demonstrated cause to end the tenancy pursuant to section 47(1)(b) of the Act. I have severed the Other Claims made by the Tenant in the Application but for the claim for reimbursement of the filing fee. As the Tenant has not been successful in disputing the 10 Day Notice and the 1 Month Notice, I decline granting her the filing fee for the Application. As I have dismissed or severed all the claims made by the Tenant in the Application, I dismiss the Application in its entirety without leave to reapply.

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.

I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. As the Tenant has not vacated the rental unit, pursuant to section 55(1) of the Act, I must grant the Landlord an Order of Possession of the rental unit. Pursuant to section 68(2)(a), I find the tenancy ended on October 27, 2022.

As the tenancy has ended, I dismiss without leave to reapply, the Tenant's claims for an order for the Landlord to comply with the Act, the Regulations and/or tenancy agreement and for an order for reduced rent for repairs, services or facilities agreed upon but not provided by the Landlord. I dismiss, with leave to reapply, the Tenant's claim for an order to seek a monetary order for compensation from the Landlord. The Tenant has the option of making a new application for dispute resolution to make her monetary claim for compensation from the Landlord.

Conclusion

The Application is dismissed without leave to reapply.

The Tenant is ordered to deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order of Possession by the Landlord. This Order of Possession 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 20, 2022

Residential Tenancy Branch