



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was accompanied by the landlord's spouse. The parties and the landlord's spouse each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Has the tenant established that the landlord should be ordered to comply with the *Act* or the tenancy agreement?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 23, 2017 and reverted to a month-to-month tenancy after March 1, 2018 and the tenant still resides in the rental unit. Rent was originally \$1,000.00 per month payable on the 1st day of each

month, which has been increased and is now \$1,041.39 per month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a manufactured home on a property of 2 acres, which is also occupied by another tenant in an RV on the property. The landlord does not reside on the property, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on June 25, 2022 the landlord posted a One Month Notice to End Tenancy for Cause to the door of the rental unit, and a copy has been provided for this hearing. It is dated June 25, 2022 and contains an effective date of vacancy of August 1, 2022. The reasons for issuing it state:

- 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord further testified that firstly, the tenant had stopped doing yard work and maintenance on the property as agreed upon. Secondly, the tenant started to cause trouble. He turned off power to the pumphouse in mid-winter. He turned off the heat light and pipes froze and then flicked the breaker in his home that powered the pump and left the premises, causing the other tenant on the property to have no water. The landlord was forced to rent an excavator and run an electrical line to the shop on the property to facilitate the pump to ensure no one could turn it off to cause disruption to other the other tenant.

The tenant was also yelling at other tenant on the rental property and was fighting with the neighbour on the other property who has had a business there long before this tenant moved in. The neighbour said that the tenant would blow a fog horn in the middle of the night, bothering the other tenant on the rental property as well as the neighbour and his tenants. This was, roughly, last year. The tenant has been fighting with everyone and doing things to cause disruption, and threatened the other tenant. Text messages exchanged between the landlord and the other tenant on the property have been provided for this hearing. Some are dated November 3, 2020, and others are not dated. The landlord testified that the tenant said he'd like to throw hot oil and acid on the landlord. The tenant

had previously threatened another person he lived with on the rental property with a knife, and her sister called police.

The other tenant who rented the RV on the rental property paid rent for September, 2022 but abruptly moved on September 1, 2022.

When threatening to throw acid or hot oil, saying it to someone else, doesn't make the landlord feel safe, especially since the tenant says he doesn't want to live there anyway.

With respect to breach of a material term of the tenancy agreement, the landlord testified that maintenance of the yard, raking and mowing is required in the tenancy agreement. The landlord has issued letters to the tenant, but since 2020 the tenant hasn't done any maintenance.

The landlord's spouse testified that what is upsetting is the work the landlord did to help him, and the tenant didn't have the decency to let the landlord know about turning off the breaker to the pump shack which is in the tenant's rental unit.

The tenant testified that the other tenant on the property violently attacked the tenant's door, who had company at the time.

The tenant only blew the fog horn once when the neighbour's dog was killing a deer, and the horn made that stop.

The tenant told the neighbour at 2:30 a.m. about noise bylaws, and the reply was, "What are you, a lawyer?" The neighbours made an effort to abide by the noise bylaws, and the tenant has a good rapport with lots of interactions.

The other tenant who resided on the property told the tenant that he hears voices in his head.

The tenant denies saying that he wants to move out, and did not threaten a previous roommate with a knife. Police arrived, but even the roommate said that wasn't true. The tenant also denies threatening the landlord with oil or acid.

Yard work was a verbal agreement, but the tenant had shoulder surgery.

The tenant has never abused the landlord or the landlord's spouse and never turned the water off or the light. The reason the landlord dug the new line and put new power in was because the tenant asked for a furnace. The landlord said she would cut off the hydro because it was in the landlord's name, but the tenant couldn't afford to put the hydro in his

name. Power is not included in the rent. The tenant would never do that, or maybe by accident after the landlord had the lines switched over. The water system is not the tenant's responsibility or the tenant's fault that it had problems.

The tenant also referred to the Details of Cause(s) section of the One Month Notice to End Tenancy for Cause, and testified that he did not do anything mentioned there.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have also reviewed all of the evidentiary material, and all of the emails and text messages are dated 2020 or earlier, with the exception of text message exchanges between the landlord and the other tenant on the property dated January 16, 2021 and March 22, 2021.

The issues with respect to loss of power in the RV on the property is dated January 14, 2021, and other invoices for repairs made due to the alleged actions of the tenant are dated in 2020.

The landlord did not indicate why the other tenant on the property abruptly vacated, and given that the emails and text messages are dated up to 4 years ago, I am not satisfied that the landlord has established that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Further if the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, surely the landlord would have issued the One Month Notice to End Tenancy for Cause prior to June 25, 2022. I accept that landlords could not issue any kind of notice to end a tenancy between March 30 and June 23, 2020, however there is very little evidence or testimony of any issues that would cause a landlord to evict a tenant for cause after June 23, 2020.

Where a landlord ends a tenancy for breach of a material term, the landlord must be able to establish that:

1. the breach is material, meaning that it is so important that a party would not have entered into the tenancy agreement if that term was not agreed to;

2. the landlord has notified the tenant of the breach;
3. the landlord has notified the tenant that the breach must be corrected within a certain time (date); and
4. that if the tenant did not correct the breach within that time, the landlord would issue a notice to end the tenancy.

In this case, the landlord did not indicate when the breach had to be corrected in the May 4, 2022 email, nor does it indicate that failure to correct the breach would result in ending the tenancy.

I am not satisfied that the landlord has established cause to end the tenancy, and I cancel the One Month Notice to End Tenancy for Cause.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the tenant as against the landlord, and I order that the tenant be permitted to reduce rent by that amount for one future month as full recovery. Alternatively, the tenant may serve the landlord with the order, which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

The tenant did not indicate what order is sought with respect to the landlord failing to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the application without leave to reapply.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated June 25, 2022 is hereby cancelled and the tenancy continues.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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