



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Tenant seeks an order pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”) to cancel a One-Month Notice to End Tenancy signed on June 14, 2022 (the “One-Month Notice”).

R.D. appeared as the Tenant. K.F. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit approximately two-years ago.
- Rent of \$700.00 is due on the first day of each month.

The parties confirmed there is no written tenancy agreement. I am advised by the Landlord that the rental unit is a separate structure on the same property as her home and that both her home and the rental unit share a driveway.

The Landlord testified that she posted the One-Month Notice on the Tenant's door on June 14, 2022. The Tenant acknowledges its receipt on that date.

A copy of the One-Month Notice was provided to me by the Tenant. It indicates it was issued on the basis that the Tenant or a person permitted on the property by the Tenant had put the Landlord's property at significant risk and that the Tenant had not paid a pet damage deposit or security deposit within 30 days as required by the tenancy agreement. The following description of the cause for ending the tenancy was written by the Landlord in the One-Month Notice:

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): July 2021 Tenant used ride on lawnmower with landlord consent however landlord heard Tenant drive over rock and blades hitting rock. PAID [REDACTED] 650⁰⁰ in parts to repair all undercarriage work Police File [REDACTED] I reported [REDACTED] FOR EXPOSING AN ERECT PENIS TO ME AND ASKING FOR A Blowjob. I had invited him for tea when I went in to check boiling water he was exposed June 10 texted to tell me he had an issue with alarm but it was resolved now. I was with my son [REDACTED] having appetizers.

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I have redacted information from the reproduction above in the interest of the parties' privacy.

The Landlord testified that she had the Tenant over for tea one afternoon. She says that they were sitting on the front deck in February 2022 and that she went to get the tea from inside. When she returned to the front deck, she says the Tenant had exposed his erect penis and asked that she perform oral sex. The Landlord says she turned the Tenant down and contacted the RCMP following the incident. A letter that was attached to the One-Month Notice and provided by the Tenant, indicates the incident took place in May or June 2022.

The Tenant denies that he exposed his penis to the Landlord. The Tenant indicates that he has a workplace injury and that he takes his pants off when he gets home. The Tenant testified that he was called over to the Landlord's home at or about 10:00 PM on October 31, 2022. The Tenant's written submissions indicate that when he attended, the Landlord was naked at her door, had fallen on her porch, and that she grabbed his penis when he helped her back into her place. According to the Tenant, he testified the Landlord is an alcoholic and that he has been threatened with eviction 6 or 7 times previously. The Tenant argued that the Landlord was intoxicated when he obtained the previous eviction threats.

The Tenant directed me to text messages between he and the Landlord in his evidence. The Tenant says that the Landlord had asked him previously if he wanted to have sex. I reproduce one of the messages dated January 25, 2022 which indicates was received from the Landlord:

My proposition is...because I'm a creature of habit and I agree. Would you sleep with me, you shower, wear underwear, I will shower wear pajamas you can put your arm around my waist but nothing else. If you roll over I know I will chase you in the bed till you fall off. Today was a horrid adventure had i been given correct directions but oh well. Pick up toaster oven and eat steak Sunday cheers
[Landlord]

I have redacted the Landlord's name from the reproduction above. The Tenant says that he showed the messages to the RCMP when he was contacted following the Landlord's complaint and that nothing came of the allegation after the police reviewed his text messages.

The Tenant emphasized that he does not wish to receive any text messages from the Landlord and simply wants to live in peace. The Landlord argued that if the Tenant wants peace, he is free to move. The Landlord argued that the One-Month Notice was a legal eviction notice.

The Landlord testified that having the Tenant reside on the same property has caused her a great deal of stress and that she does not do well with stress. The Landlord further testified that she has PTSD and that when she is stressed her mind goes blank. The Landlord testified that she purchased a dog recently, which has been the subject of some dispute between the parties, none of which is relevant to the issues in dispute in the One-Month Notice.

The Landlord provided no submissions with respect to the ridding lawn mower, though the Tenant says that the work undertaken was for routine maintenance. The Landlord alleges that the Tenant broke a gate for her fence, which the Tenant denies saying it is rotten.

The Tenant says that he was never asked to pay a security deposit by the Landlord at the outset of the tenancy. The parties confirm no security deposit had been paid.

Analysis

The Tenant seeks an order cancelling the One-Month Notice.

The Landlord testifies that the One-Month Notice was served on June 14, 2022, which the Tenant acknowledges receiving on the same date. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* and was received on June 14, 2022 as acknowledged by the Tenant.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the two notices to end tenancy pursuant to ss. 47(1)(d)(iii) (put the Landlord's property at significant risk) and 47(1)(a) (failed to pay a security deposit as required under the tenancy agreement). Upon receipt of a notice to end tenancy issued under s. 47, a tenant has 10 days to dispute the notice. If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

Rule 2.6 of the Rules of Procedure sets out when an application is deemed to have been made and states the following:

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.

I have reviewed the information on file, which indicates that the Tenant filed his application at a Service BC location on June 20, 2022. The Tenant also provided supporting information for his fee waiver on the same date. The Residential Tenancy Branch contacted the Tenant on July 7, 2022 requesting additional information, namely the applicant's mailing address and the date the One-Month Notice was served. This information was provided the next day by the Tenant.

I find that the Tenant filed his application on June 20, 2022, which is the date he provided his fee waiver and submitted his application to the Residential Tenancy Branch. I do not find that the issues in processing his application warrant the reconsideration of the time when the application had been made. The additional information that was required is minor and in no way changes the substantive issue flagged by the Tenant in his application, being the enforceability of the One-Month Notice.

As the One-Month Notice was received on June 14, 2022 and the application filed on June 20, 2022, I find that the Tenant filed his application within the 10-days permitted to him under s. 47(4) of the *Act*.

Looking at the substantive allegations, the Landlord indicates that the Tenant did not pay a security deposit, which the Tenant acknowledges. The Tenant clarifies that none was ever asked of him. I reproduce the relevant portion of the *Act*:

- 47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

The obligation to pay a security deposit arises from the terms of the tenancy agreement and is not automatic by virtue of their being a tenancy. This point is clear by reference to s. 17 of the *Act*, which permits a landlord to request a security deposit as a term of the tenancy agreement, and the use of the permissive language of “may”.

In this instance, there is no written tenancy agreement. I have not been provided evidence by the Landlord to suggest that she requested a security deposit from the Tenant. As there is no evidence to suggest that the Tenant was required to pay a security deposit, I find that he cannot be found to be in breach of a term of the tenancy agreement to do so. Accordingly, this aspect of the One-Month Notice is unenforceable.

The Landlord further alleges in the One-Month Notice that the Tenant or someone permitted onto the property by the Tenant has put her property at significant risk. The One-Month Notice specifically mentions an issue with respect to a lawnmower. The Landlord provided no submissions with respect to this issue, though her evidence includes written submissions that her son fixed a flat tire and an invoice for \$35.55 for what appears to be a tire repair.

What is unclear from the Landlord’s evidence is whether the Tenant had caused the damage at all. The Tenant testified that it was for routine maintenance. I have no reason to disbelieve this as the Landlord provided no substantive submissions on the issue at the hearing. Due to the lack of submissions from the Landlord, I find that the Landlord has failed to show that the Tenant has put her property at risk.

There is a final allegation that the Tenant exposed his penis to the Landlord. I note that the One-Month Notice does not list that the Tenant interfered or unreasonably disturbed another occupant, nor did it list that the Tenant significantly jeopardized the health or safety or lawful right of the landlord. Section 52(d) of the *Act* requires a notice to end tenancy to state the grounds upon which the tenancy is to end.

In this instance, the details of the cause indicate the One-Month Notice was issued due to the alleged penis exposure, though it is not correctly listed as a reason for ending the tenancy. I find that this deficiency runs afoul s. 52(d) of the *Act*. The enumerated list of reasons in the standard form RTB-33 correspond with the grounds for ending a tenancy under s. 47(1) of the *Act*. The listed reasons must be properly considered and checked off by a landlord so that the tenant clearly knows which sections of the *Act* the landlord is relying on to end the tenancy. It avoids confusion and avoids nebulous bases for ending a tenancy, which occurred here both due to the alleged incident and due to further allegations raised by the Landlord respecting her dog and broken fence.

The Landlord did not request that this technical deficiency be corrected under s. 68 of the *Act*, nor do I believe it is appropriate to do so on my own initiative as it would deprive the Tenant an opportunity to provide submissions on whether the notice ought to be amended.

As the allegation with respect to the Tenant exposing his penis to the Landlord was not properly set out in the notice, I find that this aspect cannot form a basis ending the tenancy under the One-Month Notice. Though the allegation, if true, would likely result in the end of a tenancy, I make no comments or findings with respect to the substantive allegation. The issue is not properly before me as the Landlord failed to properly listing it as a reason for ending the tenancy in the One-Month Notice.

As the Landlord has failed to demonstrate that the One-Month Notice was properly issued under ss. 47(1)(a) and 47(1)(d)(iii) of the *Act*, I find that One-Month Notice is unenforceable. Accordingly, I grant the Tenant's application and cancel the One-Month Notice.

Conclusion

The One-Month Notice is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

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 08, 2022

Residential Tenancy Branch