



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was reconvened from a hearing on November 21, 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 September 27, 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 22, 2022 (the "Interim Decision"). This decision should be read together with the Interim Decision.

The Tenant and the Landlord's agent BG 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.

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 Tenant 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.

The rental unit is part of a four-unit complex. This tenancy commenced on January 15, 2009 and is month-to-month. Rent is currently \$661.00 due on the first day of each month. The Tenant paid a security deposit of \$300.00.

Copies of the One Month Notice have been submitted into evidence. The One Month Notice is signed by BG on behalf of the Landlord and has an effective date of October 31, 2022. It states the reasons for issuing this notice are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has serious jeopardized the health or safety or lawful right of another occupant or the landlord.

The One Month Notice provides the following additional details of cause:

The tenant repeatedly verbally and emotionally abuses and harasses the other occupants in the complex. The tenant has received warning letters and emails informing her that this behaviour needs to stop; however, it continues.

The Tenant's application indicates that the Tenant received a copy of the One Month Notice posted to her door on September 27, 2022.

BG testified that she has been the property manager for the rental complex since 2019. BG stated that the Tenant has subject other occupants in the complex to ongoing verbal and emotional abuse, since shortly after the Tenant had moved in.

BG testified the Landlord has issued several warning letters to the Tenant. BG referred to warning letters dated June 24, 2019, July 16, 2019, and March 25, 2022, which have been submitted into evidence by the Landlord. The Landlord also submitted copies of warning letters issued by past property managers to the Tenant in 2012 and 2014.

The June 24, 2019 warning letter asked the Tenant to "stop with the posting of signs that are verbally abusive and discriminatory in nature". This letter enclosed a photograph of a sign said to have been posted on the Tenant's patio, which states that "litter bugs are losers".

The July 16, 2019 warning letter to the Tenant states in part as follows (Tenant's name redacted for privacy, Landlord's name unredacted):

We have reviewed your file that is full of complaints, concerns, accusations, verbal abuse and slander since 2010 (you moved into the building in 2009). All of these concerns throughout the years were looked into and taken very serious; however after several years of false accusations, name calling, upset and offended tenants in the building and verbal abuse not only to other residents of the building but also the employees of Royal LePage Nanaimo Realty, we became more concerned about your negative and abusive behaviors.

[...]

During the review of your file, to date you have discriminated towards many residents of the building – stated in your own words:

“Skeleton Man”, “Hooker”, “Creepy Bastard”, “Dirty Addicted Loser”, “Bitch”
In your letter to Royal LePage dated November 15, 2014, you also stated the following to Royal LePage which was very offensive:

“I would describe your office as a dysfunctional viper’s pit of lazy, vindictive gossips”

“The way you conduct yourselves is a joke and as individuals, you are pathetic”
[Tenant], these ongoing offensive statements, accusations and verbal abuse have been going on for years. We are informing you that these behaviors are to cease and desist immediately with all residents of the building as well as Royal LePage Nanaimo Realty, to avoid a 30-day eviction notice.

We have a substantial amount of these kinds of letters from you and it was even stated in 2014 from Royal LePage: “You clearly have issues with every tenant in the building”. This has still been ongoing for 9 years now. You have issues with almost every tenant that moves into that building and now it has become a form of harassment.

The Landlord also submitted a copy of the Tenant's letter dated November 15, 2014.

The Landlord's warning letter dated March 25, 2022 stated that BG had continued to receive “concerns and complaints regarding the same unacceptable behaviour” from the Tenant “towards other occupants in the building [...] as well as visitors and neighbors that are experiencing the same thing”. This letter states that it is the Tenant's “last and final warning”. BG confirmed this letter had been sent to the Tenant via regular mail.

BG referred to statements obtained from tenants residing in two of the three other units in the building.

These include handwritten statements from tenants DA and PA dated January 4, 2022 and November 3, 2022 ("DA and PA's Statements"), which state as follows:

- The Tenant would knock on the walls (as if knocking on a door) whenever DA and PA made sounds such as going to the bathroom at night, dropping a spoon, and knocking a book off their chair.
- The Tenant lets DA and PA know they've made the noises to harass her by knocking on the wall. DA and PA deny that they were deliberately trying to upset the Tenant. DA and PA would "cringe" when they've dropped a bar of soap in the shower or a pair of reading glasses. When DA and PA dropped a plate or utensil while drying the dishes, they would get a bang on the ceiling from the Tenant in response.
- When DA and PA were taking down their Christmas tree and vacuuming, they had to listen to the Tenant's knocks "all day". Another time, the Tenant was knocking on the bedroom wall and there was furniture or closet door thumping at 7:30 am. DA and PA described the Tenant's behaviour as "random and uncalled for at times".
- One time PA was sweeping the shared laundry room and the Tenant opened her door at start yelling and swearing at PA, telling PA to take her medication and to go to the hospital. It was so loud that DA and a tenant in another unit, SH, came out to see if PA was alright. The Tenant was shouting that PA was a "f-cking c-nt". DA and PA stated that "this language has been used on all of us who live here. If you ask [the Tenant] to stop this is always her immediate response. (you cannot talk to her)".
- DA and PA are unable to enjoy their balcony. PA cannot sweep or tend to her plants without the "upsetting" and "stressful" verbal abuse from the Tenant. DA and PA were cleaning their carpets on a sunny day with their balcony door open. The Tenant's reaction was to put her vacuum on her patio/balcony and turn it on and off for the rest of the day every time that DA and PA turned their carpet cleanser off or when DA and PA went to their balcony to cool off. When DA and PA go out onto the balcony at night to look at the stars, the Tenant turns her outside patio/balcony light on and off.
- The Tenant's "deliberate actions" and "reactions" to other tenants is "not warranted". The other tenants "all respect each other" and "get along fine". DA and PA stated they "have done nothing to [the Tenant] to deserve this". DA and

PA described the situation as “stressful” and “hurtful”, which they have put up with for 9 years.

The Landlord’s evidence also includes a statement from SH dated November 2022 (“SH’s Statement”). SH is a tenant in another unit in the building. SH’s Statement describes the following:

- On several occasions, the Tenant removed a load of laundry that another tenant had yet to retrieve, and rather than placing it on the table or in a basket, the Tenant throws it on the floor.
- The Tenant repeatedly requested police assistance and made false reports to property management.
- The Tenant confronted visitors over parking disputes in “an extremely combative and verbally abusive fashion”, including the use of the “harshest of profanities”.
- The Tenant has a propensity to bang on the walls and repeatedly slam her door, while screaming profanities.
- While passing by the Tenant’s door recently, the Tenant called SH an offensive word in the presence of a child.
- SH feels uncomfortable with entering the common area of the building to retrieve her mail, utilize laundry facilities, or use the main front door which requires SH to pass by the Tenant’s door.
- SH tries to avoid the Tenant as more often than not, passing by the Tenant in the building or on the street makes SH subject to the Tenant’s “unpredictable, combative and confrontation outbursts and verbal attacks”. SH described the incidents to have caused “heightened emotional stress”, which is “extremely draining, frustrating, and really starting to take its toll”.

BG testified that the other tenants have been making the above complaints for years now. BG testified that the Tenant’s behaviour is affecting the other tenants’ personal life, and makes things difficult when their family and friends come over to visit.

BG testified there were other individuals who had complained to her about the Tenant’s behaviours, but were not comfortable providing written statements as they did not want the Tenant’s “anger and verbal abuse” to “escalate”. BG testified that two neighbours had expressed their concerns about the Tenant and had stated that they just want “peace and quiet”.

BG testified that the Tenant has made false accusations about her as well in the course of this proceeding. BG testified that the Tenant falsely accused BG of having called the

Tenant “in a fury” saying “you are not going to speak” three times. BG stated that no such telephone conversation had occurred. BG denied the Tenant’s allegation that BG or another property manager had sent neighbours into the rental unit to stalk the Tenant. BG also denied the Tenant’s allegation that the Landlord did not give the Tenant any particulars of the complaints against her.

BG pointed out that in the Tenant’s written submissions, the Tenant admitted to verbal abuse directed towards her neighbours. BG testified that the Tenant has also directed profanities and verbal abuse at property management employees.

BG stated that the Tenant has received more chances than any tenant ever had. BG stated that if the Landlord is successful in this application, the Landlord is agreeable to giving the Tenant a little over one month to find alternative accommodations.

In response, the Tenant denied the allegations against her. The Tenant testified that she is an older woman who uses a walker and is “in poor health”. The Tenant stated she is often verbally attacked and had been too afraid of the tenants in the building to respond. The Tenant stated that it took years for her to get the “courage” to “swear back”.

The Tenant submitted written statements to explain her version of the events. The Tenant’s written statements include the following excerpt:

After [SH] got my name when the property managers sent my letters to her, she has used her phone to wage a one-sided war with me. Life has become a nightmare as she has recruited people from this building, neighbourhood and all over town to join her in harassing me. The modus operandi is so simple, doable and deniable: coughing, throat clearing, nose wiping and for those people who pride themselves on their boorishness, hocking and spitting. Others, mostly women, call me My Dear or Dear, which they never did before. As [SH] screamed several years ago, ‘this is all about parking’.

The Tenant stated that SH, who lived across from the Tenant, was “addicted to drugs” and would harass the Tenant. The Tenant described other neighbours who would scream at the Tenant and call the Tenant names.

The Tenant testified that SH would get her friends to park in the Tenant’s parking stall, which blocks the door to the rental unit. The Tenant explained that she has difficulty

using the building's front and back doors due to lack of accessibility with those doors. The Tenant described having to fight for her right to her parking space for years. The Tenant referred to a photograph which shows the back of a truck parked close to the building. The Tenant stated that SH backed a borrowed truck too close to the building so the Tenant was unable to get by with her walker. The Tenant expressed that contrary to the Landlord's assertion, the Tenant had been assigned that particular parking space. The Tenant stated that there was constant harassment for years.

The Tenant denied that she threw other tenants' laundry on the floor. The Tenant stated that due to her health problems, it is difficult for her to bend down to reach the dryers.

The Tenant denied that she had received the warning letter from the Landlord dated March 25, 2022. The Tenant stated that the property managers had sent inflammatory letters about the Tenant to SH.

The Tenant stated that the "abusive" phone call with BG did happen, and that she was told by BG she "cannot talk" three times. The Tenant testified that BG had said she would make this dispute in BG's favour by withholding information until the Tenant had submitted evidence.

The Tenant testified that a man across the street coughs and spits many times, which is part of the "cyberbullying" against the Tenant started by SH. The Tenant submitted messages she says were copied from Facebook, which according to the Tenant were made by the son of former tenants in the building and SH using a fake name.

The Tenant testified that the management had asked for the Tenant to write a complaint in order to evict SH previously. The Tenant stated that SH was allowed to stay because the Tenant could not afford and was unable to get an affidavit in time. The Tenant stated that SH blamed the Tenant for the eviction notice and targeted the Tenant afterwards. The Tenant stated that the coughing and spitting started with SH and that the Tenant is "constantly" coughed at and spit at. The Tenant testified that SH's daughter had threatened to kill her.

The Tenant denied that she had complained about everyone. The Tenant stated she refused to be a victim and started to fight back by swearing. The Tenant stated she was defending herself against the others' verbal abuse.

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.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I have reviewed the One Month Notice and find that it complies with the requirements of sections 52 and 47(2) of the Act.

I find the Tenant was served with a copy of the One Month Notice on September 27, 2022 in accordance with section 88(g) of the Act.

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 October 7, 2022 to dispute the One Month Notice. Records indicate that the Tenant

submitted this application on October 6, 2022. I find the Tenant made this application within the 10-day dispute period 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.

Sections 47(1)(d)(i) and (ii) of the Act 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:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, [...]

In this case, although the Tenant gave a blanket denial of the allegations against her, I find the Tenant acknowledged both during the hearing and in her written submissions that she does yell at other tenants in the building and use profanities, but argued that she was doing so to defend herself from harassment and bullying.

I find the Tenant's written submissions include statements such as:

- "Increasingly stressed and disconcerted from increasing harassment, bullying and threatening behaviours from neighbours, store clerks and professionals when I encountered them or they walked by my apartment, I would call them losers or cowards."
- "Over time, as the harassment increased in intensity and volume I found myself swearing at anyone who harassed me. [...] Now I am so tense and worn down that I scream and curse at the bullies without being able to stop myself."

I find the Tenant claims that many individuals—SH, DA, PA, other tenants in the building, visitors, property management (including BG), nearby neighbours, healthcare workers, retail and restaurant staff, police officers, and even strangers that the Tenant meets on the street—all have been acting in concert to attack and harass the Tenant,

due to what originated as a parking dispute between the Tenant and SH. I accept that the Tenant has a history with SH; however, I find it highly unlikely that so many other people would intentionally harass or verbally abuse the Tenant, whether at SH's request or otherwise. I find the Landlord have submitted multiple witness statements which describe the Tenant harassing other residents.

In contrast, I find the Tenant's written submissions contain many complaints of harassment, verbal abuse, and stalking from all kinds of individuals directed towards her. However, I find the Tenant has not provided any independent or corroborating evidence to support these allegations, such as confirmation from another witness. I am therefore doubtful as to the accuracy of those claims.

I find the Tenant's written submissions suggest that the Tenant expressed her displeasure towards others' seemingly innocuous behaviour in provocative ways that may have led to reactions which further reinforced the Tenant's belief that everyone is out to harass her. For example, I find the Tenant described an incident where she took a picture of a neighbour walking his dog on the sidewalk, because the neighbour and his dog did not make way for the Tenant or give her enough space. According to the Tenant, the neighbour called her "crazy" and gave her the finger.

I find the evidence also suggests that the Tenant is hypersensitive to others coughing, clearing their throats, or wiping their nose in the Tenant's presence. The Tenant's written submissions include numerous references to such incidents, which include strangers such as hospital workers, restaurant staff, and police officers. I find the Tenant acknowledged in her written statements that sometimes she would scream and swear at the individuals in response. For example, the Tenant stated as follows regarding one of the other tenants in the building:

March 16/22 he cleared his throat by my door so I yelled: 'I have a right to live here peacefully and without harassment so get off my case' and then I stuck my head out the patio door and said, 'do you understand?' March 19/22 he cleared his throat in the hallway so I yelled at him to grow up. June 22/22 he loudly cleared his throat so after months of his torment I swore and told him to fuck off. He cleared his throat twice more so I told him he needs to get help, so he cleared his throat again before leaving. I was in my living room the entire time so this was not a face-to-face confrontation.

I find the evidence before me demonstrates that overall, the Tenant has a tendency to perceive non-threatening acts from other individuals to be a personal attack on her and to respond with verbal abuse that includes name calling and use of profanities, in particular towards the other tenants living in the rental complex.

I accept the Tenant may have various grievances about residing at the rental unit, including the building's accessibility, the long-standing dispute over parking, and difficulty in getting along with the other residents. However, I find the Tenant's negative outbursts towards the other tenants to have been excessive and unwarranted in multiple occasions.

Based on the evidence before me, I am satisfied on a balance of probabilities that the Tenant has subject other tenants in the rental complex to many incidences of verbal abuse, which I find to include the use of profanities and derogatory name calling. I find that given the length of time over which the Tenant's behaviour has persisted and the fact that multiple tenants have been affected, the Tenant has "significantly interfered with" and "unreasonably disturbed" the other occupants of the rental complex within the meaning of section 47(1)(d)(i) of the Act.

Therefore, I conclude that the Landlord has proven cause under section 47(1)(d)(i) of the Act on a balance of probabilities. 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 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.

Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession states:

B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

In this case, I find the Tenant will need significantly more time to vacate the rental unit due to having health and mobility issues as well as having been a long-term resident of the rental unit. I find it would be appropriate to extend the effective date of the One Month Notice to February 28, 2023 in the circumstances.

Pursuant to section 55(1) of the Act, I grant the Landlord an Order of Possession of the rental unit effective at 1:00 pm on February 28, 2023.

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 **February 28, 2023 at 1:00 pm**. 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: December 23, 2022

Residential Tenancy Branch