Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing. The landlord attended the hearing and was represented by her husband/agent, JW ("the landlord").

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue – service of tenants' evidence
The landlord acknowledged being served with the tenants' application for dispute resolution but noted that the tenants' evidence was served upon them on the morning of November 30th. The landlord also argues that the digital photos are not clearly labelled with a description. The tenant WT testified that she served the landlords with a USB stick containing digital evidence by leaving it hanging on the handle of their front door

the night of November 29th. The landlords submitted a video recording of the tenant leaving it on their doorknob. The tenant testified that the labelling of the photos was done by a person she hired to upload the digital evidence for her. She understood it was all properly labelled identical to the evidence provided to me.

Pursuant to Rule 3.7, to ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office. For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2". To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Further, the tenants' evidence is considered served upon the landlords on December 2, 2022, three days after it was posted to the landlord's residence, in accordance with sections 88 and 90 of the *Act*. December 2nd is 11 days before the hearing. Rule 3.14 requires that 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. Pursuant to rule 3.11, Evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

I find that the tenants did not provide their evidence to the Residential Tenancy Branch 14 days before the hearing; unreasonably delayed the service of their evidence upon the landlord and failed provide the landlord with documents that were identified in the same manner as the documents provided to me. For these reasons, the tenants' documentary evidence was excluded from consideration in this decision.

The tenants acknowledged service of the landlord's evidence at least 7 days before the hearing and confirmed it was sufficiently labelled and accessible by them. As such, the landlord's evidence was considered in this decision.

Preliminary Issue – unrelated claims

On November 29, 2022, the tenants filed an amendment to the original application, adding a claim for monetary compensation from the landlord. Residential Tenancy

Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the tenant's amendment were not related and would be dismissed with leave to reapply.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?
Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on October 1, 2017 as a fixed one-year tenancy with a second one-year tenancy being signed after the first year. The landlord testified that a condition inspection report was not done with the tenants at the commencement of the tenancy. The landlords were unable to provide a reason for not conducting a condition inspection report, indicating they were unaware of the requirement. The tenants wanted to move in quickly, so the landlords gave them the keys and the tenants moved in.

The rental unit is an entire single family home with 3 bedrooms upstairs and a finished office on the lower level. There is also an unfinished space in the lower level that is not meant to be used as a living space.
On July 2, 2022, the landlord conducted an inspection of the rental unit and discovered multiple plants throughout the house. The landlord estimates there are between 80 to 100 plants and those plants put the house at significant risk due to the humidity. In his written statement, the landlord reasons,

"Plants needs regular water and high-level moisture to live, long-time high-level moisture will dramatically damage the inside frame, wood floor, drywall, and insulation. These damages are potentially going on inside and serious, not show up in a short time. Even so, the landlord has already found that a lot of damage has been apparent"

The landlord cites the following evidence of damage:

a) The moss grows up on the master bathroom ceiling
b) The wall paint has come off the guest bathroom
c) The drywall was bulged out or cracked but was put back and repainted in Livingroom (Sealed by the tenants but without any notice to the landlord).
d) The wood floor also has obvious damage on it and there must be more found after removing the plants.

Further, the landlord alleges the tenants used the unfinished basement storage space as a bedroom for their daughter, causing warm air to enter the unfinished basement wall. When warm air meets the other side, cold air condenses into water inside this wall, causing the insulation and house framing to become damaged.

The landlord submits that using the storage space as a bedroom means the tenants have allowed an unreasonable number of occupants in the rental unit.

On July 15, 2022, the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause, citing the following reasons for ending the tenancy:

1. the tenant has allowed an unreasonable number of occupants in the unit/site;
2. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;

The tenants gave the following testimony. They acknowledge receiving the landlord's notice to end tenancy on July 15, 2022. The landlord did not conduct a condition inspection report with them at the commencement of the tenancy. None was offered and they simply moved in.

The landlord never stipulated which rooms could be used. No restrictions on using any parts of the house in the 4 or 5 years they lived there. The tenants agree there is mold in the house, however the tenants attribute it to poor building construction and the age of the house, being over 30 years old. It has nothing to do with their plants, but rather an improperly installed vapor barrier. Further, all the windows in the house leak and there was pre-existing mildew throughout the house. All of this was communicated to the landlord.

The tenants acknowledged that on July 15th, two of their daughters were living with them, however they both moved out on September 1st. Regarding the mold in the bathroom, the tenants were able to wipe it away, resolving the issue.

Analysis

The parties agree the tenants were served with the landlord's 1 Month Notice to End Tenancy for Cause on July 15, 2022. They filed an application to dispute the landlord's notice on July 22, 2022, within 10 days as required under section 47 of the *Act*. Pursuant to Rule 6.6, the landlord bears the burden to prove on a balance of probabilities, the grounds for ending the tenancy stated on the notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that when the landlord gave Notice to the tenants, the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that as of July 15th:

1. the tenant has allowed an unreasonable number of occupants in the unit/site;
2. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;

I turn first to the unreasonable number of occupants in the unit. The landlord testified that it's not how many occupants were living in the rental unit, but where the occupants were sleeping. Section 47(1)(c) focuses on the unreasonableness of having too many occupants in a rental unit, given the space of the rental unit and it's ability to service a

greater number of people than originally designed for. I find that in a 3 bedroom/3 bath house, a family of four – including a mother, father and two daughters is not unreasonable. Section 47(1)(c) does not provide a reason to end the tenancy based on the tenants using storage space for their daughter to use as a bedroom.

Next, I turn to the second and third reasons for ending the tenancy. The Merriam-Webster dictionary defines **significant** as, *"having or likely to have influence or effect, of a noticeably or measurably large amount".* **Unreasonable** means, *"exceeding the bounds of reason or moderation".*

I have viewed the photos of the plants in the rental unit provided by the landlord and I cannot come to the same conclusion as the landlord: that the existence of the houseplants is putting the property at a significant risk or that they cause extraordinary damage to the property. The landlord submits that the existence of the plants causes high humidity and condensation, however I find insufficient evidence to support this claim. The landlord did not draw my attention to any measurements of humidity in the rental unit and no expert opinions or reports were supplied to corroborate the argument. While the landlord may suspect that houseplants cause excess humidity, the landlord has not provided sufficient evidence to satisfy me that this is the case.

Lastly, the landlord argues that the wall between the unfinished storage space and the utility room is damaged due to the landlord's use of the storage space as a bedroom for their daughter, causing extraordinary damage to the rental unit and putting the property at significant risk. The tenant argues that the vapor barrier was improperly installed and that the house has poor ventilation from inadequate windows. Section 21 of the Residential Tenancy Regulations states:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In order for me to find the walls began to suffer from significant damage after the tenants began occupying the unit, I need an understanding of the condition of the walls at the commencement of the tenancy. Pursuant to Part 3 of the Residential Tenancy Regulations, the responsibility to schedule the inspection falls upon the landlord.

The landlord did not conduct a condition inspection report with the tenants at the commencement of the tenancy, leaving the condition of the walls ambiguous. To end a tenancy, the onus to prove, on a balance of probabilities, that the tenants significantly damaged the wall falls upon the landlord. In this case, I cannot reasonably come to this conclusion. The walls may have had pre-existing signs of mildew. Conversely, if the mold began to accumulate during the tenancy, the tenants have raised the possibility that it was due to improper vapor barrier installation or poor ventilation. I do not find the tenants put the property at significant risk or that they caused extraordinary damage to the rental unit.

For the reasons set out above, I cancel the landlord's notice to end tenancy for cause.

As the tenants' application was successful, the tenants are also entitled to recovery of the $100.00 filing fee for the cost of this application. The tenants may withhold $100.00 of a single payment of rent due to the landlord.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This 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: December 14, 2022

Residential Tenancy Branch