



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNC, MNDC, OLC
For the landlord: OPC, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord;
- compensation for a monetary loss or other money owed; and
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The landlord applied for the following:

- an order of possession of the rental unit pursuant to the Notice served to the tenant; and
- to recover the cost of the filing fee.

The tenant, the tenant's advocate, the tenant's partner/occupant, the landlord, and the landlord's interpreter/agent/advocate/son attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's

evidence, and make submissions to me. The parties confirmed receipt of the other evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

#1 –

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice, the most urgent of the issues listed, as this will determine whether the tenancy ends or continues. The balance of the tenant's application is **dismissed, with leave to re-apply**.

I informed the parties of this decision at the hearing. Leave to reapply is not an extension of any applicable time limit.

During the hearing, I was referred to a previous dispute between the parties on the landlord's application filed on October 18, 2022, for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act. The hearing on the landlord's application was on November 24, 2022 and the Decision of another arbitrator dated November 25, 2022, is referenced on the cover page of this Decision and below, as needed. The other arbitrator dismissed the landlord's application, due to insufficient evidence, and issued orders to the landlord and the tenant.

#2 –

Further, the application and evidence show that the tenant filed his application for dispute resolution on September 8, 2022, requesting an order requiring the landlord to comply with the Act, regulations, or tenancy agreement. This claim was in relation to the alleged issues with the addendum in the parties' agreement that the tenant would pay for the electricity to the garage.

The day after receiving the 1 Month Notice from the landlord, the tenant filed an amendment to the original application on October 3, 2022. The tenant claimed that an error was made at the RTB when marking which Notice to end the tenancy was being challenged, as the amendment reflects a challenge of a 10 Day Notice, which led to a further amendment on December 29, 2022, to mark that the 1 Month Notice was being challenged.

The evidence provided by the landlord reflects that they understood the 1 Month Notice was being challenged by the tenant. Further, no issues were raised by the landlord at this hearing as to the date the error was corrected, as the landlord has not issued the tenant a 10 day notice.

I find it reasonable to conclude the tenant made a clerical error in filing to dispute the 1 Month Notice, and I therefore accept the tenant's application was timely filed.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their 1 Month Notice served to the tenant?

If so, is the landlord entitled to an order of possession of the rental unit and recovery of the cost of the filing fee?

Background and Evidence

A written tenancy agreement was filed in evidence, which showed the two-year, fixed-term tenancy began on July 1, 2021, for a monthly rent of \$2,000.

I also heard evidence that the tenant rents a separate gateway house on the property, that the landlord lives on the property as well, separately, along with other tenants. An

addendum to the written tenancy agreement, which is a consideration referenced in this dispute, is reproduced as follows:

2. Electricity Bill (BC Hydro)

- a. The tenant acknowledges that they will be responsible for the entire monthly BC Hydro bill for the meter (Meter number 5829853) attached to the laneway house.
- b. The tenant acknowledge that landlord's electric car charging and tenant's shared washer and dryer is also billed on the meter number 5829853.
- c. BC Hydro bill is charged every two month and landlord will present bill at rent due date to collect the previous two month's BC Hydro bill.
- d. At the end of tenancy, tenant will be responsible for the electricity usage up to and including the last day of tenancy and will be collected at move out.

Notice to end the tenancy –

Pursuant to Rule 6.6 and 7.18, the landlord proceeded first in the hearing to support the Notice. The 1 Month Notice was filed in evidence by both parties. The Notice was dated October 1, 2022 and listed an effective move-out date of November 30, 2022. The tenant said the Notice was put on his door at 1:00 am that night. The landlord filed a signed and witnessed proof of service showing the Notice was attached to the tenant's door at 12 am, October 2, 2022.

The reasons listed on the Notice to end tenancy were:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Dispute section on the Notice, the landlord is instructed to "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".

In this section, the landlord writes:

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): The tenant has violated our terms of tenancy and illegally disabling and turning off the electricity to our garage, the shared washer and dryer, electric car charging and exterior lighting on Oct 1st 2022. The tenant's behaviour has severely affected quiet enjoyment and security, safety and physical well-being of all the other occupant of the property.

[Reproduced as written]

In support of the Notice, the landlord's agent testified to the following. The tenant was responsible for paying for the electricity to the unattached garage, which included the landlord's charging of their electrical vehicle (EV) and the shared washer and dryer. On October 1, 2022, the tenant text messaged the landlord while the landlord was out and said that he was going to turn off the power to the garage. When the landlord and family returned home, the power to the garage was out, which meant the exterior light to the property was not on, causing a safety issue. The landlord anticipated that the other two tenants living in the main house would start to complain about their loss of laundry if power was not restored. The other tenants' quiet enjoyment would be impacted if they did not have the comfort of washing their own clothes. Despite their requests to the tenant not to turn off the power, the tenant did so. The landlord issued the tenant the Notice that night to "get things going", which the agent said was meant to make the tenant turn the power back on.

The landlord's agent was unable to provide the law that was contravened by the tenant turning off the power and said that no law was broken, as such.

The landlord's relevant evidence included text messages between the parties, which included the text message from the tenant, dated October 1, 2022, at 9:51 pm, regarding the power to the garage being turned off.

Due to the testimony and evidence of the landlord, I did not require a response from the tenant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

As to the first reason listed on the 1 Month Notice, section 47 (1)(e)(ii) permits a landlord to seek an end to the tenancy for cause if the tenant or a person permitted on the property by the tenant has engaged in illegal activity that 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.

I have reviewed Residential Tenancy Policy Guideline 32, which shows that an illegal activity would include a serious violation of federal, provincial or municipal bylaw. The party alleging the illegal activity, the landlord here, has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In the case before me, the landlord's agent confirmed that the tenant has not breached or violated any federal, provincial, or municipal bylaw, as such. The landlord did not refer me to what law was allegedly violated. I therefore find the landlord has submitted insufficient evidence to support the Notice that the tenant has engaged in any illegal activities.

As to the second cause, Subparagraph 47(1)(h)(i) of the Act permits a landlord to seek an end to the tenancy for cause if the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenancy Policy Guideline 8 applies and states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;

- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

In this case, the landlord provided no evidence that the tenant was issued a written notice to correct the breach of an alleged material term prior to issuing the Notice. Rather, the landlord's agent confirmed that they issued the 1 Month Notice to "get things going", indicating that this was to compel the tenant to restore electricity to the garage. The 1 Month Notice was issued two hours after the tenant informed the landlord of his plan to terminate the power to the garage, which I find unreasonable and not in compliance with the requirement of the Act.

For this reason, I find the landlord submitted insufficient evidence to prove the tenant was given written notice prior to the 1 Month Notice being issued.

For the above reasons, I find the landlord submitted insufficient evidence to prove either of the two causes listed on the 1 Month Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated October 1, 2022, for an effective move out date of November 30, 2022, is not valid and not supported by the evidence, and therefore has no force and effect.

I therefore grant the tenant's application for cancellation of the 1 Month Notice.

I **ORDER** that the Notice be cancelled and further order that the tenancy continue until ended in accordance with the Act.

The previous arbitrator ordered the tenant to refrain from disconnecting or terminating the power to the EV charger, shared laundry facilities or exterior lights, unless the tenant obtains an arbitrator's authorization to do so.

As I have cancelled the landlord's 1 Month Notice, I **dismiss** the landlord's application for an order of possession of the rental unit pursuant that Notice and for recovery of the cost of the filing fee, without leave to reapply.

Conclusion

The tenant's application for cancellation of the 1 Month Notice was successful.

The Notice issued by the landlord has been ordered cancelled and is of no force or effect due to the insufficient evidence of the landlord.

The tenancy has been ordered to continue until ended in accordance with the Act.

The issues in the tenant's application not dealing with his request to cancel the 1 Month Notice were severed, and dismissed, with leave to reapply.

The landlord's application is dismissed, without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 27, 2023

Residential Tenancy Branch