



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to:

- cancel the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager ("**SH**") and its residence manager ("**DD**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and SH confirmed, that he served the landlord the notice of dispute resolution package and supporting documentary evidence. SH testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is a one-bedroom apartment located in a multi-unit apartment building. The parties entered into a written tenancy agreement starting May 13, 2010. Monthly rent is \$1,005.72 (including parking and storage) and is payable on the first of each month. The tenant paid the landlord a security deposit of \$390, which the landlord continues to hold in trust for the tenant.

On July 22, 2022, the landlord conducted an annual inspection of the rental unit. SH testified that the rental unit was "filthy". The carpets were sticky, items were stacked in piles throughout the rental unit (almost up to the ceiling in some places), and on the stovetop. Some piles of items impeded entry to and exit from the rental unit. The landlord submitted photos of the rental unit taken during the inspection confirming this condition.

SH argued that the volume of items and the manner in which they were stored presented a fire hazard and that the condition of the carpets caused him to be concerned that it could attract bedbugs or cockroaches (although no cockroaches were observed during the inspection).

On July 25, 2022, the landlord issued a warning letter advising the tenant that the condition of the rental unit, in the landlord's opinion, amounted to a breach of a material term of the tenancy agreement. The letter stated that the landlord would re-inspect the rental unit in one month and that if it was not adequately cleaned, the landlord may issue a one month notice to end tenancy for cause.

SH testified that this was not the first time the tenant received a warning about the condition of the rental unit. On February 22, 2019, the landlord sent the tenant a warning letter stating that the tenant had breached the tenancy agreement and was required to clean the rental unit. SH testified that this letter pre-dated his employment with the landlord, and that he could not speak to the specific condition of the rental unit in 2019 which prompted the letter.

The landlord conducted a second inspection on August 30, 2022. SH testified that the condition of the rental unit was the same, if not worse. The landlord submitted photos confirming this.

On August 31, 2022, the landlord issued the Notice. It specified the reasons for ending the tenancy as tenant or person permitted on the property by the tenant has put the landlord's property at significant risk and that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord did not include any details of the cause for ending the tenancy on the Notice. However, at no point during the hearing did the tenant indicate he was uncertain why the Notice was issued or what the underlying problem was.

The tenant disputed the notice on September 7, 2022.

The landlord inspected the rental unit again on November 10, 2022. SH testified that the rental unit was "a bit better" and cleaner than before, and that the piles of items had been removed, however there remained significant clutter. The landlord submitted photos confirming this.

The landlord conducted a final inspection of the rental unit on December 23, 2022. SH testified that the rental unit was “a lot better” and that the only remaining issue was the carpets, which he characterized as “quite gross” and still posed a risk of attracting bedbugs or cockroaches. He testified that he had not seen any cockroaches or bedbugs during any of his inspections and that the landlord had not received any reports of bedbugs or cockroaches from the tenant’s neighbours.

SH testified that the rental unit, in its current condition, does not pose any risk to the landlord’s property and the tenant is not in breach of his obligations to keep the rental unit clean. However, he stated that he believed that the tenant only cleaned the rental unit because of the hearing scheduled, and feared that the condition would revert if the tenancy is allowed to continue.

The tenant agreed that the condition of the rental unit was as depicted in the photographs submitted into evidence. He denied that there were any bedbugs or cockroaches in the rental unit or that his carpets were not adequately cleaned. However, he testified that he did not believe the condition of the rental unit was ever so bad as to warrant his eviction.

The tenant testified that he has been struggling with his mental health, and allowed clutter to accumulate in the rental unit. Due to his depression and anxiety, he was not able to clean the rental unit without help. This is why, he said, he did not clean the rental unit before the August inspection.

The tenant’s sister and niece flew up from California to assist him in cleaning and purging the rental unit in mid-November 2022. He testified that the bulk of the items that were stacked in the rental unit were taken to the dump or donated to charity. He also made better use of the storage (cupboards and cabinets) in the rental unit. He testified that he has purchased a robotic vacuum cleaner which regularly vacuums and that he shampoos the carpets once a month. He credited his sister with helping him develop strategies to keep the unit clean (which include taking a proactive step every day to clean the rental unit and to clean the bathroom once a week). He stated that he believes he can keep the rental unit in its current, clean, and clutter-free condition.

Analysis

Section 47(1) of the Act states:

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

- [...]
- (iii) put the landlord's property at significant risk;
- [...]
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Based on the evidence presented at the hearing, I accept that the tenant was served with the Notice issued pursuant to this section on August 31, 2022

The parties do not disagree about the condition of the rental unit at the time the Notice was served. The tenant argued that this condition does not amount to a significant risk to the landlord's property. I disagree. An accumulation of items to the level in the rental unit poses a fire hazard, and can lead to catastrophic damage to the landlord's property. See, for example, *Langara Gardens Holdings Ltd. v. Chen*, 2023 BCSC 58, where a fire causing over \$500,000 in damages was caused by a tenant keeping her apartment in a "near-hoarding state".

However, despite the fact that the Notice was issued for a valid reason does not necessarily mean that the tenancy must be ended. In *Senft v Society For Christian Care of the Elderly*, 2022 BCSC 744, the court conducted a judicial review of a decision of the Residential Tenancy Branch (the "RTB") where the arbitrator upheld a notice to end tenancy for cause issued because the tenant failed to clean or repair a rental unit. Following this notice being issued, but before the hearing, the tenant repaired and fully cleaned the rental unit. The presiding arbitrator did not consider the subsequent conduct of the tenant when assessing the validity of the notice to end tenancy. The court wrote:

[38] The [RTB] Decision contains no discussion of the context and purpose of s. 47 of the *RTA*. Several decisions of this Court confirm that RTB arbitrators must keep the protective purpose of the *RTA* in mind when construing the meaning of a provision of the *RTA*: [citations excluded]

[39] The arbitrator failed to consider post-Notice conduct of the petitioner. The arbitrator found that the evidence of the current state of the rental unit, and its cleanliness after the petitioner's retention of cleaners, was irrelevant. However, as this Court found in *McLintock* at paras. 58-59, post-notice conduct is relevant when deciding whether an end to tenancy was justified or necessary in the context of the protective purposes of the *RTA*.

[40] The evidence that the petitioner cleaned the rental unit was relevant to the consideration of whether the eviction was necessary and justified. By refusing to consider it, I find that the arbiter failed to engage in a purposive analysis of s. 47 under the *RTA*. For example, the arbitrator found that the rental unit was reasonably clean by August 2021. If that was the case, how could the petitioner's

conduct have placed other occupants or the landlord's interests at risk? This is not something the arbitrator considered.

Based on the evidence presented at the hearing, I find that the rental unit is currently in a reasonably clean condition and does not pose any significant risk to the landlord's property. I accept the tenant's testimony that he has developed strategies which will allow him to maintain this condition.

I do not find there is sufficient evidence to support the landlord's concern that the condition of the rental unit will revert to its prior state if I order the Notice cancelled. While the tenant received a warning letter about the condition of the rental unit in the past, I have no evidence to establish what the condition was, or if it posed a risk to the landlord's property. Without such evidence, I do not find that a pattern of conduct exists which would give credence to the landlord's concerns.

I note that, in the event the condition of the rental unit does revert as the landlord fears, the landlord could issue another notice to end tenancy for cause, and that an arbitrator may find, even if the rental unit is subsequently cleaned, the notice should be upheld due to an established pattern of conduct on the part of the tenant. However, absent such a pattern, I do not find it appropriate to end the tenancy on the basis that the condition of the rental unit poses a significant risk to the landlord's property.

For these same reasons, I do not think it appropriate to end the tenancy on the basis that the tenant breached a material term of the tenancy agreement.

In the circumstances, I do not find it appropriate to order that the tenant recover the cost of the filing fee from the landlord. I dismiss this portion of the tenant's application.

Conclusion

I order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

I dismiss the tenant's application for the recovery of the filing fee, 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*.

Dated: January 18, 2023