Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On August 24, 2022, the tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated August 23, 2022 (the One Month Notice); and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

1) Is the tenant entitled to an order to cancel the One Month Notice?
2) Is the tenant entitled to the filing fee?

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 parties agreed on the following particulars regarding the tenancy. It began March 1, 2022; rent is $800.00, due on the first of the month, and the tenant paid a security deposit of $400.00, which the landlord still holds.

The landlord testified that the One Month Notice was served on the tenant on August 23, 2022, by email. The tenant testified they received the Notice the same day.

A copy of the One Month Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date of September 30, 2022, states the grounds for ending the tenancy, and is in the approved form.

The reasons listed on the One Month Notice are:

- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- the tenant has not done required repairs of damage to the unit/site/property/park; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of the Event(s) section refers to the tenant's use of an unapproved air conditioner (AC), and the landlord's emailed notices to the tenant that the unit must be removed.

The landlord testified that the tenant installed an unapproved AC unit in his ground floor rental unit. Photos are submitted as evidence, showing an open window, an AC unit in the window, and cardboard and duct tape in the space above the AC unit. The landlord testified the tenant later replaced the cardboard with thin particle board. The landlord testified that they told the tenant that anything to be installed must first be approved by the landlord, and that the tenant's AC setup presented a security issue. The landlord testified that someone wishing to enter the building could easily do so by removing the cardboard and climbing through the window, into the tenant's unit, thus gaining access to the interior of the building.

The landlord testified they provided written notice to the tenant, beginning on July 7, 2022, that he needed to remove the unapproved AC unit.

The landlord testified that the material term breached by the tenant is item 2 of the addendum, which states: "No structural alterations, painting, papering, re-decorating, or driving of nails or screws into the walls, floors or woodwork shall be done without the prior consent of the Landlord or Caretaker. No tape or adhesive material shall be used on the walls." The landlord testified this term in material to the tenancy as the tenant's AC unit was an unapproved installation which jeopardized the security of the building.

The landlord testified that they had to disclose the tenant's unapproved AC setup to the building's insurer, but that the insurer had seemed satisfied that the landlord had been trying to resolve the issue.

The tenant testified that the previous manager had said there was an AC unit the tenant could use, but that the previous manager fell ill, and the tenant never received it. The tenant presented no evidence in support of his statement. The landlord testified that they received all of the documentation from the previous owners, but it included nothing about an AC unit for the tenant, and the former manager had not mentioned a previous agreement.

The parties agreed that the AC unit has been removed from the tenant's window.

The landlord testified they are still seeking an order of possession because they expect the same issue to arise once the weather warms up again.

Analysis

Based on the parties' testimony, I find the landlord served the One Month Notice on the tenant on August 23, 2022, in accordance with section 88 of the Act, and that the tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act: it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives it. As the tenant received the Notice on August 23, 2022 and applied to dispute it the next day, I find the tenant met the 10-day deadline.

Rule 6.6 states:

> **6.6 The standard of proof and onus of proof**
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove one or more of the reasons they wish to end the tenancy as indicated on the One Month Notice.

The parties agree that the AC unit has been removed from the tenant's window.

In *Senft v. Society for Christian Care of the Elderly*, 2022 BCSC 744, the justice found that an analysis of a dispute must consider the "post-notice" conduct of a tenant when deciding whether an end to tenancy is justified or necessary in the context of the protective purposes of the Act.

The crux of this dispute is the air conditioning unit the tenant had in his window. As the parties agree that the tenant has removed the unit from his window since the service of the One Month Notice, I find on a balance of probabilities that the cause for the One Month Notice has been remedied.

Therefore, I cancel the One Month Notice, and find the landlord is not entitled to an order of possession in accordance with section 55 of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in their application, I order the landlord to pay the $100.00 filing fee the tenant paid to apply for dispute resolution.

Conclusion

The tenant's application is granted.

The One Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

The tenant may make a one-time deduction of $100.00 from a future month's rent.

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 17, 2023

Residential Tenancy Branch