



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

On August 11, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- for the Landlord's compliance with the legislation and/or the tenancy agreement;
- for reimbursement of the Application filing fee.

On September 21, 2022, they amended their Application:

- to dispute the One-Month Notice to End Tenancy for Cause (the "One-Month Notice") served by the Landlord on September 15, 2022;
- to suspend or set conditions on the Landlord's right to access the rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on January 12, 2023. Both parties attended the teleconference hearing.

Preliminary Matter – Tenant's service of Notice of Dispute Resolution Proceeding and parties' service of evidence

The *Residential Tenancy Branch Rules of Procedure* sets out the rules for parties' submission and provision of evidence to the Branch and each other. This sets timelines for doing so. The *Act* sets out acceptable methods for service of documents.

The Tenant stated they provided a copy of the Notice of Dispute Resolution Proceeding, issued by the Residential Tenancy Branch on September 13, 2022, to the Landlord via registered mail. The Landlord verified they received information about this hearing as described by the Tenant.

The Tenant stated they did not provide evidence to the Landlord; however, they uploaded this to the Residential Tenancy Branch's online portal. The Tenant stated their concern about retaliation from the Landlord stemming from this dispute resolution process.

The Residential Tenancy Branch sent information to the Tenant, along with the Notice of Dispute Resolution Proceeding, on September 28, 2022. This included the following Residential Tenancies Fact Sheet (Residential Tenancy Branch-114), excerpted:

Within three days of the date the Proceeding Package is made available by the RTB, the applicant must serve each respondent separately . . . with the Proceeding Package and copies of evidence submitted with the application.

The Rules require both the applicant and the respondent to serve their evidence on each other and submit it to the RTB as soon as possible and, in any event, in accordance with the deadlines in the Rules.

The Rules allow an arbitrator to refuse to consider evidence that was not served to the other party and/or submitted to the RTB as soon possible or if the arbitrator determines you deliberately delayed the exchange of evidence.

Additionally, the *Residential Tenancy Branch Rules of Procedure* are in place to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. These list relevant points that apply in this situation with the Landlord's Application:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

. . .

- any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party . . . in accordance with the Act or [Rule 3.1] may or may not be considered depending on whether the party can show to the arbitrator that it was new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

With consideration to the information provided to the Tenant on the hearing process, as well as the *Residential Tenancy Branch Rules of Procedure*, I do not accept the Tenant's documentary evidence. The Tenant in the hearing stated they did not disclose this material to the Landlord, and I find that to be fact. For me to consider this evidence would be a breach of the principles of natural justice, procedural fairness, and would be prejudicial to the Landlord who has not had the chance to review the evidence or provide a response.

The Landlord set out that they provided their evidence to the Tenant. They provided documents in an envelope taped to the rental unit door on December 31, 2022. The Tenant confirmed they received this package from the Landlord. With service to the Tenant complete and verified, I give the Landlord's documents full consideration in this hearing.

At the outset of the hearing, I informed the parties that testimony, affirmed under oath, is a form of evidence that I still consider in this hearing. On this basis, I provided each party ample opportunity to make submissions and respond to what they heard from the other party.

Preliminary Matter – unrelated issues

At the outset, I advised both parties of the immediate issues concerning the One-Month Notice served by the Landlord.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes "related issues", and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: ". . . the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on the One-Month Notice. By Rule 6.2, I do not consider the other issues concerning the Landlord's access to the rental unit and the Landlord's compliance with the *Act*/tenancy agreement concerning other residents' pets. By Rule 2.3, I find these issues are unrelated, and I amend the Tenant's Application to exclude these matters. The Tenant has leave to reapply on these other issues. This means they may file a new and separate application to

address these issues, and this does not preclude proper consideration of this issue by another arbitrator.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee for their initial Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement. The parties agreed that the tenancy started in 2019, but in late 2019 this Tenant became the sole occupant in the rental unit, prompting a renewed signed tenancy agreement.

The rental unit is part of a four-plex home. There are other residents in other parts of the fourplex.

The Landlord issued the One-Month Notice on September 15, 2022. This set the end-of-tenancy date on October 31, 2022. Images of the One-Month Notice appears in the Landlord's evidence – one image shows the document attached to the door of the rental unit. The reasons provided on page 2 of that document are:

- Tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord provided the following details on page 2 of the document:

- Tenant will not let landlord to do monthly inspection
- We don't know damage done; don't know state of rental
- Disturbs other tenants; impacts other tenants right to quiet enjoyment
- Tenant is harassing landlord at work on phone & email
- Tenant would not let landlord do maintenance for a year now

The Landlord provided a written account for this hearing, covering the following points:

- feeding wildlife: This “got to be a real problem” – the Tenant did have bird feeders in place and was in the habit of “pouring piles of grain in the parking lot”. The neighbouring resident has had their deck garden “wiped out by raccoons and squirrels coming to get the bird seed”. This also led to a visit from “a large black bear”. Another resident had their window broken by a bear. The seed attracts turkeys, who draw in “other wildlife.” The Landlord provided photos of the bear damage, and the Tenant feeding birds.
- The Tenant is complaining about another resident’s dog “harassing, endangering or even chasing [their] cats”.
- The Tenant did not let the Landlord in to do an inspection, even with proper notice. In the Landlord’s estimation this puts them “at risk of liability and compromising the other tenants safety.”
- If dissatisfied with the Landlord or other residents, the Tenant makes noise to increase the disturbance. In the hearing the Landlord referred to wooden shoes and a ukelele.
- The Tenant contacted the Landlord’s partner at work, which the Landlord equates to “harassment”.
- The Tenant erected a tent on the lawn for a neighbouring pet; this killed the lawn underneath.
- The Tenant is vigilant about their quiet time and space – this affects other residents’ ability to enjoy living in their own respective units.

The Landlord provided a written statement from a former roommate of the Tenant, who stated the Tenant was extra-vigilant about noise and smells of all kinds. This led to the Tenant’s complaining about virtually aspect of the tenancy and other residents who lived in close proximity.

The Landlord also included the email the Tenant sent to the Landlord’s partner complaining about the other residents, and the Landlord, who seemed to “reinforce” the other residents’ behaviour. In this message, the Tenant stated their feeling that “It seems that when I make a reasonable complaint regarding another tenant, [the Landlord] rewards me with negative consequences.” The Tenant did not receive a response from the Landlord’s partner, so then

emailed to the partner's employer directly asking for a response to their queries on miscellaneous items concerning this tenancy.

The Landlord's partner provided a letter dated November 29, 2022. They described their feeling of being "stalked" by the Tenant who made repeated attempts to contact the Landlord's partner at their own workplace. This resulted in the Landlord's partner "loss of work hours to deal with the situation." They felt "violated and unsafe working and it did affect [their] ability to do [their] work." In the hearing, the Landlord referred to this as "harassment".

The Landlord also provided a copy of the Tenant's email message (dated August 9, 2022) to them concerning another resident's large-sized dog.

The Landlord also provided images of their notes to the Tenant concerning an inspection in the rental unit, for an insurance request. In the hearing, the Landlord referred to this as a "monthly inspection".

In the Landlord's evidence there is also a note to the Tenant "giving [the Tenant] notice to stop feeding wildlife on the outside of the building including [their] deck." The Landlord informed the Tenant this was endangering the other Tenants, and stated: "Failure to comply in doing so will result in consequences." The Landlord in the hearing specified that the Tenant feeding wildlife continues to the time of the hearing.

In response to what they heard in the hearing, the Tenant stated they were not aware of the issue of disturbing other residents, and the Landlord, with noise until this hearing. They were not aware that contacting the Landlord's partner was an issue, and had not specifically been told to not contact that person.

Also, they stated the Landlord never made a request at any time to make monthly inspections. They also stated their fear of having the Landlord enter the rental unit, and preferred that the Landlord's partner do the inspections alone without the Landlord.

Similarly, they were not getting the message regarding wildlife from the Landlord; however, the Tenant was aware of a \$60,000 fine for baiting bears. The Tenant objected to wildlife attending, and disagreed that other animals are arriving to the rental unit property because of their use of birdseed. As stated plainly in the hearing: "why was I not given a notice about the bear on the deck?"

Analysis

The Act s. 47(1) provides authority for a landlord to issue a notice to end a tenancy if a tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health/safety/lawful right or interest of the landlord or another occupant
- put the landlord's property at significant risk
- tenant has engaged in illegal activity that is likely to damage the landlord's rental property
- breaching of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Landlord presented a lot of evidence for this hearing. On my review, it appears that a conflict is ongoing between the Tenant and other residents, as well as the Landlord. I find this does not constitute significant interference, unreasonable disturbance, or serious jeopardy to others' health/safety.

There is a lot of dialogue between the parties about comments made by the other residents about the Tenant, and the Tenant's own comments about others to the Landlord. There is a substantial amount of complaining at this residential property; however, I am not satisfied that the Tenant is instigating all of the conflict on their own to an unreasonable degree.

In regard to the personal interactions between the Tenant and other residents, the Landlord provided mostly third-hand descriptions about minor interactions, and the apparent brusque manner of the Tenant concerning several issues. The Landlord appears to be the conduit for each resident at the rental property to air their grievances about the others. While this can be trying for the Landlord, causing them to spend a considerable amount of energy, I am not satisfied from the evidence provided that the Tenant is the source of all conflict here and I am not satisfied it amounts to significant interference or disturbance. Given the volume of dialogue, in the form of emails and text messages, it is not surprising that some specific charges against the Tenant were missed, and I give credence to the Tenant's account in the hearing that this was the first time they were hearing about the noise issue.

In line with this rationale, I give no weight the Tenant's former roommate account. This primarily describes the Tenant's character, and there is no evidence in that account that would stand as reasons to end this current tenancy.

Regarding the animals, the Landlord did not provide proof that they advised the Tenant of any local bylaws that may prohibit these actions. There was no visit from a bylaw compliance officer and the Landlord did not refer directly to local bylaw or statutes that may prohibit feeding of wildlife. Also, the Landlord did not refer to specific incidents by date/time and nature of the incident. It appears the Tenant is engaging in this action, as they freely admitted to in the hearing; however, I am not satisfied that it amounts to disturbance or interference as grounds to end this tenancy.

I am satisfied that the Tenant was not made aware of any restrictions on communicating with the Landlord's partner at their place of work. This is due to the Tenant's own reticence to deal directly with the Landlord; however, if this proved to be problematic for the Landlord, there was no communication upfront to the Tenant about this, and it cannot form the basis for ending this tenancy. This does not amount to harassment, and the Landlord's indication on the One-Month Notice of "harassing" implies something ongoing, which this was not. I am not satisfied that the Tenant's emails were nothing more than an inconvenience, and do not constitute unreasonable disturbance or interference.

I also accept the Tenant's statement that inspections were never designated as "monthly". There was no record of these visits on a regular basis in the Landlord's evidence. A single instance of the Tenant not cooperating with the Landlord's need for inspection does not constitute grounds to end this tenancy.

Finally, specifically with reference to the One-Month Notice, the Landlord indicated that the Tenant had breached a material term of the tenancy agreement. There is no record of the Landlord identifying any ongoing issue as a material term breach to the Tenant, and no record of the Landlord providing that the action must cease before a certain date or that it would constitute grounds to end this tenancy. I find this specific ground indicated by the Landlord on the One-Month Notice is invalid.

The Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee to them. I authorize the Tenant to reduce one upcoming rent payment by exactly \$100, one time, as reimbursement.

Conclusion

I grant the Tenant's Application for a cancellation of the One-Month Notice. That document is of no force or effect, and the tenancy shall continue. Because the Tenant was successful, I grant them reimbursement of the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 25, 2023

Residential Tenancy Branch