Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated July 21, 2022 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The two tenants, "tenant JS" and tenant MG ("tenant"), and the two landlords, "landlord PW" and landlord CB ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 60 minutes from 11:00 a.m. to 12:00 p.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

Both landlords confirmed that they co-own the rental unit. The landlord provided the rental unit address.

The landlord and the tenant identified themselves as the primary speakers at this hearing, and tenant JS and landlord PW agreed to same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they did not want to settle this application, they were ready to proceed with this hearing, and they wanted me to make a decision. Both parties were given multiple opportunities to settle and declined.

I cautioned both tenants that if I dismissed their application without leave to reapply, I would uphold the landlords' 1 Month Notice, end this tenancy, and issue a two (2) day order of possession against them. Both tenants confirmed that they were prepared for the above consequences if that was my decision.

I cautioned both landlords that if I cancelled their 1 Month Notice, I would not issue an order of possession to them, and this tenancy would continue. Both landlords confirmed that they were prepared for the above consequences if that was my decision.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. The tenant confirmed receipt of the landlords' evidence. In accordance with sections 88 and 89 of the *Act*, I find that both landlords were duly served with the tenants' application and both tenants were duly served with the landlords' evidence.

The landlord stated that the tenants were served with the landlords' 1 Month Notice on July 21, 2022, by registered mail. The tenant confirmed receipt of the notice on July 26, 2022, by way of registered mail. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 1 Month Notice on July 26, 2022.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the current amount of $2,024.93 is payable on the first day of each month. A security deposit of $997.50 was paid by the tenants and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlord stated that this tenancy began on July 27, 2021, while the tenant claimed it was July 26, 2021.

The landlord confirmed that the landlords seek an order of possession based on the 1 Month Notice. The tenant confirmed that the tenants dispute the notice.

A copy of the 1 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice is August 31, 2022, and the reasons indicated are:

- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park*
- *Tenant has not done required repairs of damage to the unit/site/property/park*
- *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 testified regarding the following facts. There was 940 megabytes of data provided as evidence for this hearing. There is significant damage to the rental unit and the tenants refuse to repair it. The tenants said they would do the repairs at the end of their tenancy. Section 32(3) of the *Act* states that damages must be repaired by the tenants if they are caused by them. Section 47(1)(g) of the *Act* states that the landlords may end a tendency if no required repairs are done. In April 2022, the landlords provided an e-mail to the tenants, stating that they need professional repairs to be done by June 6, 2022, which is a reasonable timeline. The tenants refused to do the repairs. In 2016, this was a new condo, and it was rented to professionals, who left it in "immaculate condition" when the tenants moved in. The move-in condition inspection report signed by the tenants and the landlord's agent on July 26, 2021, does not list any

damages, identified as issues by the landlords. The tenants claims that the damages were there when they moved in. On April 8, 2022, a special assessment report was completed by a professional for the landlords, which outlines the work to be done and the cost. Layers of the laminate flooring have been "chipped and cupped," as per folder 1 of the landlords' evidence. It seems to be water damage. The laminate flooring cannot be repaired piecemeal, so it has to be fully replaced, which will cost $6,404.00.

The landlord stated the following facts. The windowsills have paint peeling and a leaking issue, due to the tenants' potted plants. The landlords provided the cost in folder 4 of their evidence. There are nails and hooks in the window casings, due to the tenants' plants. It has to be painted and re-lacquered, as per the landlords' folder 2. There are excessive hooks in the walls due to the tenants' plants, which are also in folder 2. The landlords provided photographs of the plants showing a water leak and drywall damage. The landlords provided evidence in folder 4, regarding the curtain rods being installed on the bedroom wall, which is against the tenancy agreement. In folder 3, the landlords provided evidence of backsplash grout damage and in folder 4, the landlords provided evidence of damage to the washing machine door hinge. The landlords had a repairman seal the silicone around the bathtub and the faucet in the bathroom, which was not to be removed, but the tenants removed it. The tenant engaged in intimidation tactics against landlord PW, during an inspection, where the landlord's handyman was present to repair the silicone seal for the bathtub. The tenant blocked landlord PW with his body stance in the living room and kitchen. Landlord PW told the tenant that he was interfering with her duties. The tenant made an audio recording during his aggressive behaviour, and after that point, switched to a video recording to show his good behaviour. The landlords filed a police report against the tenant. This elevates the landlord's safety risk level. The landlords have a right to inspect the rental unit and they need security. The tenants failed to inform the landlords about the problem with the fire alarm. The landlords found out through an email to all property owners. The tenants only informed the strata and building managers, not the landlords. The landlords discussed the issue with the strata manager.

The landlord testified regarding the following facts. The tenants failed to notify the landlords about the silicone around the bathtub and the grout in the kitchen. The landlords noticed bugs in the rental unit during the August inspection. Section 10(2)(a) of the tenancy agreement states that reasonable health and cleanliness sanitary standards must be upheld. In folders 7 and 10 of the landlords' evidence, it discusses general hygiene and cleanliness. The tenants' evidence is not relevant. The tenants use the word "extraordinary" for the damages. The landlords do not use the word "extraordinary" but instead use the word "significant." The tenants are trying to

sensationalize the issue by using the word “extraordinary.” The tenants’ photographs show poor lighting, angles, and minimize the damages. The tenants’ screenshots from July and September 2021, could be modified to change the dates and exclude evidence. The tenants took these photographs at the beginning of their tenancy, before their plants grew larger. The walls need to be repaired and repainted. It is unreasonable for the tenants to continue to inhabit the rental unit.

The tenant testified regarding the following facts. The first box checked by the landlord on page 2 of the 1 Month Notice says that there must be “extraordinary” damage. It contradicts the statement made by the landlord at this hearing, where he said he would not use the word “extraordinary” to describe the damages. The tenant has been a carpenter for 10 years and he knows that laminate flooring can be replaced piecemeal. Landlord PW refused to answer questions about the toilet when he asked.

Tenant JS testified regarding the following facts. The landlords have overstepped their boundaries. They want the tenants to organize construction at the rental unit. The landlords are referring to wear and tear as “extreme damage” and it is not a “hazard or emergency.” The landlords expect the rental unit to look like what it did, when the tenants moved in. The landlords have not seen the rental unit in over 20 months. The landlords’ agent performed a walkthrough inspection when the tenants moved in and the agent had different standards than the landlords. Wear and tear to the doors and walls are noted in the move-in condition inspection report. There are 2 small chips in the flooring that measured 2 square inches and 1 slightly raised section in the flooring where there are no chips or discoloration. There are small chips at the windowsill and the drywall and the tenants will repair this when they move out.

Tenant JS stated the following facts. The backsplash issue if due to the oven vent being too close. The silicone sealant did not peel off and the handyman noted there was no structural damage to the faucet or the backsplash. The tenants provided a video in a slideshow and screenshot photographs. Why would the tenants want to alter the dates for 1 photograph and 1 chip. The tenants did not receive any instructions or directions from the landlords regarding what they could hang or hook on the walls or regarding the curtains. There is nothing in the *Act*, tenancy agreement, or addendum that gives direction. The landlords are saying that structural alterations need to be made. Landlord PW said herself that the tenant was not being verbally or physically aggressive during the inspection, which the landlords refer to as “intimidation.”

The tenant stated the following facts. During inspection with landlord PW, he left work early to do the inspection. Landlord PW said excuse me, so the tenant moved, but he

still wanted to see what they were doing. When things took a turn, the tenant began recording a video. The tenants received the landlords' email from April 2022, requesting repairs of damages. There were eleven points on that email. The tenants complied with all they were entitled to do.

The landlord stated the following facts in response. From July 2021 to the inspection in April 2022, is 8 months, not 20 months, as per tenant JS's testimony. The humidity level was high in the rental unit and the tenants were not using the fans or opening the windows, when the landlords inspected the unit. If the tenant is an accredited carpenter like he says he is, then he should know that the nails at the window are excessive, which is common sense, not the landlords being "nitpicky."

Landlord PW stated the following facts in response. During the inspection, she was taking photographs of the rental unit and looking for leaks. She was very upset and asked the tenant not to interfere. She was shaking and the handyman was aware and heard her. She called the landlord from the bathroom, and she stayed with the handyman and decided to leave with him.

Tenant JS stated that the tenants knew the previous tenants that were living at the rental unit. She claimed that the landlords did not inspect the rental unit during covid, so that is where the 20 months of non-inspection by the landlords, comes from.

Analysis

Burden of Proof

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within 10 days after the date the tenants received the notice.

The tenants confirmed that they received the notice on July 26, 2022 and filed their application to dispute it on August 5, 2022. Therefore, I find that the tenants are within the 10-day time limit to dispute the 1 Month Notice. Accordingly, the burden shifts to the landlords to prove the reasons on the 1 Month Notice. I informed both parties of the above information during this hearing.

The landlords confirmed receipt of the tenants' application, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"). The NODRP

contains the phone number and access code to call into both hearings, and states the following at the top of page 2, in part (emphasis in original):

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules of Procedure* state, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

This hearing lasted 60 minutes. The landlords had ample time and multiple opportunities to present their submissions and evidence. During this hearing, I repeatedly asked the landlords if they had any other submissions and evidence to present and to respond to the tenants' submissions and evidence.

The landlords did not sufficiently review their documents submitted as evidence for this hearing. They mentioned the existence of documents and folders but failed to explain

them in sufficient detail during this hearing. For example, they referred to an assessment of the rental unit, completed by their professional, and indicated that the costs were in the document, but failed to provide any such individual for each item or total costs, during this hearing.

Legislation

Section 32 of the *Act* states the following:

Landlord and tenant obligations to repair and maintain
32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
(a) complies with the health, safety and housing standards required by law, and
(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
(4) A tenant is not required to make repairs for reasonable wear and tear.
(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 of the *Act* states the following, in part:

Emergency repairs
33 (1) In this section, "emergency repairs" means repairs that are
(a) urgent,
(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
(c) made for the purpose of repairing
(i) major leaks in pipes or the roof,
(ii) damaged or blocked water or sewer pipes or plumbing fixtures,
(iii) the primary heating system,
(iv) damaged or defective locks that give access to a rental unit,
(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

Required Repairs

I find that the landlords provided insufficient evidence to show that the tenants have not done required repairs of damage to the rental unit or property.

I find that that the landlords provided insufficient evidence that the tenants failed to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit, as per section 32 of the *Act*, as noted above. I find that the landlords provided insufficient evidence that any emergency repairs are required to be completed by the tenants, as per section 33 of the *Act*, as noted above. I further find that the landlords provided insufficient evidence that any urgent or necessary repairs are required to be completed by the tenants during their tenancy. I disagree with the landlord's assertion that the rental unit is uninhabitable.

I find that the photographs submitted by the landlords show minor cosmetic issues, that are very difficult to see. The landlords have taken very close-up and zoomed-in photographs which I find still fail to show urgent damages that require immediate repair. Further, the quotation for flooring and assessment for repair of other damages provided by the landlords are not signed by any professionals. The assessment does not provide a total amount for work to be done and the quotation is on an excel spreadsheet.

I do not find minor cosmetic issues require immediate repair by the tenants during their tenancy. This includes nails and hooks in the windowsills and walls, chips and cupping in the laminate flooring, silicone seals around the bathtub and faucet, backsplash and kitchen grout, and a bedroom curtain rod, among other issues.

It appears that the landlords expect the tenants to complete renovations during their tenancy, including to replace the laminate flooring for $6,404.96, and repair the walls and windowsills, among other issues. I find that the tenants are required to comply with Residential Tenancy Policy Guideline 1, and potentially repair any damages caused by them, beyond reasonable wear and tear, at the end of their tenancy.

Extraordinary Damage

I find that the landlords provided insufficient evidence to show that the tenants or a person permitted on the property by the tenants, caused extraordinary damage to the unit or property.

As noted above, I found that that the landlords provided insufficient evidence that the tenants failed to comply with sections 32 and 33 of the *Act*, or that any urgent or necessary repairs are required to be completed by the tenants during their tenancy.

I do not find minor cosmetic issues to be "extraordinary" damage, which is considered as more than "ordinary." This includes nails and hooks in the windowsills and walls, chips and cupping in the laminate flooring, silicone seals around the bathtub and faucet, backsplash kitchen grout, and a bedroom curtain rod, among other issues.

As noted above, I found that the photographs submitted by the landlords show minor cosmetic issues, that are difficult to see and fail to show "extraordinary" damages to the rental unit. As noted above, the assessment and quotation from the landlords are not signed by any professionals.

By his own admission, the landlord testified that the tenants did not cause "extraordinary" damage and he would not use that word. The tenant pointed the above information out during this hearing and the landlord did not respond to or deny same, after I provided him with a chance to respond.

Breach of a Material Term

Residential Tenancy Policy Guideline 8 defines material terms:

> *A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*
>
> *To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*
>
> *The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution*

proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

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.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that the landlords failed to provide sufficient evidence that the tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. As noted above in Residential Tenancy Policy Guideline 8, even if terms are referenced as “material” in a tenancy agreement, that is not decisive.

I do not find minor cosmetic issues to be a breach of material terms of the tenancy agreement, requiring a correction during this tenancy or warranting an end to this tenancy. This includes nails and hooks in the windowsills and walls, chips and cupping in the laminate flooring, silicone seals around the bathtub and faucet, backsplash kitchen grout, and a bedroom curtain rod, among other issues. I find that the above issues are not urgent damages that require immediate repair.

As noted above, I found that the photographs submitted by the landlords show minor cosmetic issues, that are difficult to see and fail to show urgent damages that require immediate repair to the rental unit. As noted above, the assessment and quotation from the landlords are not signed by any professionals.

If the upkeep, repairs, or cleanliness of the rental unit were such “material” terms to the landlords, they would not have neglected inspection of the rental unit from the beginning of this tenancy in July 2021 to April 2022, a period of approximately 9 months. I find

that the landlords failed to provide sufficient evidence of how or why provisions of their tenancy agreement are “material” terms.

I find that the landlords failed to meet their onus of proof, as outlined in Residential Tenancy Policy Guideline 8, above.

Findings

I note that the inspection incident, referenced by both parties during this hearing, where landlord PW claimed she felt unsafe from the tenant’s behaviour, does not qualify under any of the three reasons checked off by the landlords on the 1 Month Notice. I further note that the police report provided by the landlords, states that landlord PW did not find the tenant to be verbally or physically threatening towards her and she did not want the attending police officer to speak to the tenant about the incident. The landlords did not provide evidence that criminal charges were laid against the tenant, nor that any criminal convictions were made against the tenant.

On a balance of probabilities and for the above reasons, I find that the landlords did not issue the 1 Month Notice for a valid reason.

The tenants’ application is granted. The landlords are not entitled to an order of possession. The landlords’ 1 Month Notice, dated July 21, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in this application, I find that they are entitled to recover the $100.00 filing fee from the landlords.

Conclusion

The tenants’ application is granted.

The landlords are not entitled to an order of possession.

The landlords’ 1 Month Notice, dated July 21, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to deduct $100.00 on a one-time basis only, from their future rent payable to the landlords for this rental unit and tenancy, in full satisfaction of the monetary award for the filing fee.

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 05, 2023

Residential Tenancy Branch