



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with the tenant's application, filed on October 7, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated September 30, 2022 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord's agent and the tenant 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 43 minutes from 9:30 a.m. to 10:13 a.m.

The landlord's agent and the tenant confirmed their names and spelling. The landlord's agent provided her email address, and the tenant provided his mailing address for me to send this decision to both parties after the hearing.

The landlord's agent said that the landlord company ("landlord") named in this application, owns the rental unit. She confirmed the legal name of the landlord. She provided the rental unit address. She stated that she is employed by the landlord as a resident manager. She said that she had permission to represent the landlord at this hearing.

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, the landlord's agent and the tenant both 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. I informed them that I could not provide legal advice to them or act as their agent or advocate. 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. Both parties were given ample and additional time during this hearing but declined to settle this application.

I cautioned the tenant that if I dismissed his application without leave to reapply, I would uphold the landlord's 1 Month Notice, end this tenancy, and issue a two (2) day order of possession against him. He confirmed that he was prepared for the above consequences if that was my decision.

I cautioned the landlord's agent that if I cancelled the landlord's 1 Month Notice, I would not issue an order of possession to the landlord against the tenant and this tenancy would continue. The landlord's agent confirmed that the landlord was prepared for the above consequences if that was my decision.

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

The landlord's agent confirmed that she personally served the 1 Month Notice to the tenant on September 30, 2022. The tenant confirmed personal receipt of the notice on September 30, 2022. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on September 30, 2022.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant 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 relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019. Monthly rent is payable on the first day of each month. The tenant paid a security deposit of \$675.00, and the landlord continues to retain this deposit in full.

The landlord's agent stated that the landlord seeks an order of possession based on the 1 Month Notice. The tenant confirmed that he is disputing the landlord's 1 Month Notice.

Both parties agreed that the 1 Month Notice indicates an effective move-out date of October 31, 2022, and was issued for the following reasons, which was read aloud by the tenant during this hearing:

- *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;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Both parties agreed that that 1 Month Notice states the following in the details of cause on page 2 of the notice, which was read aloud by the tenant during this hearing:

"Tenant neglecting to accompany/supervise their minor when outside. Child repeatedly witnessed intentionally hurting other children (kicking, punching, throwing ball and spitting at other children). On Sep. 27, 2022, staff vehicle was damaged by same minor throwing big rock at it. Such misconducts are breach of

clause 18 of tenancy. Jeopardizing lawful right and welfare of others as well as unreasonably disturbing quiet enjoyment of other occupants and landlord.”

The landlord's agent testified regarding the following facts. The tenant's child is repeatedly hurting other kids. The tenant is trying to teach his son to do hurtful actions to other kids. The tenant's son is not supervised, despite notice. The landlord posts notices on the billboards every year that children are supposed to be supervised at all times and parents are responsible for their actions. The landlord provided this evidence at pages 14, 15, and 18. On pages 16 and 17, the landlord provided a notice from July 21, 2021 that the landlord's son was in the courtyard without adult supervision, and on October 27, 2021, the landlord provided a notice that the tenant's son was lifting a picnic table without supervision. The landlord's son was in the pool without adult supervision and threw a rock at a car. At page 19, the landlord provided a notice that adults are supposed to accompany any person under age 14. Physical hurting is not tolerated in the complex.

The landlord's agent stated the following facts. The landlord called the non-emergency police line, as per page 20 of its evidence, and if there was parent supervision the incident might not have happened. The tenant was telling his son by way of doing a “punching action” to punch another kid. At page 21, the landlord provided evidence that it called ICBC and the police regarding damage to the vehicle from the rock being thrown at it. At page 22, there is an incident regarding the pool rules. At pages 23 to 31, the landlord provided witness statements from other people in the building. The statements talk about the tenant's son hurting their children, foul language from him, him calling another occupant “fat and ugly,” and him running through the hallways and disturbing other residents. This behavior is not acceptable by the landlord. It is also against clause 18 of the tenancy agreement on page 3.

The tenant testified regarding the following facts. Regarding the damage to the property, it was the landlord's agent's own car that was parked by the poolside and in the picture provided, it is a “no parking” area. The landlord's agent cannot just park her car anywhere. The rock hurt the tenant's son's foot and he found it inside the pool, so he threw it out and it hit the landlord's agent's car. That is why the landlord is pursuing an eviction of the tenant. The tenant was supervising 3 kids on an alternate basis in the pool and play area. It was a false statement by the landlord's agent to move the tenant out of the building. The tenant does not understand the foul language complaint and has not received a notice from the landlord about this. As soon as the landlord's agent's car was hit by a stone, then all the notices started to come from the landlord. Everyone is lying including the landlord and all of her witnesses. The tenant agrees

with the incident in the hallway as per the landlord's testimony. The tenant has proof. The tenant's son is being bullied by the landlord's agent's daughter and he saw this when he was sitting by the pool. He told the landlord's agent about it and had a discussion with her daughter. The tenant and his son are allowed to use the pool because they pay rent, so they can go in the pool whenever they want.

The landlord's agent stated the following facts in response. She was working that day, so she was allowed to park her car by the office, which is near the pool. There is a statement from an adult at page 28 of the landlord's evidence, which says that the tenant's son was unaccompanied by an adult, and they were never asked to watch the tenant's son. Bullying is a strong word. The tenant's son has physically or verbally hurt other kids. The witnesses are not lying, as they were present when incidents happened, and other kids saw it too. Other witnesses saw the tenant do a "punching motion" to show his son, but they are afraid of the tenant, so they did not provide a statement. Another tenant changed their statement and pointed to another kid for the spitting incident. Other tenants will not lie if something happened. The landlord is evicting people for a reason.

The tenant stated the following facts in response. The landlord's agent is behaving this way with the tenant because of an increase in rent and she is trying to be "bossy." She is trying to take advantage of her "power."

Analysis

Burden of Proof and Rules

During this hearing, I notified the landlord's agent that the landlord had the burden to prove the reasons for issuing the 1 Month Notice to the tenant. The *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of the reasons on the notice.

The tenant, as the applicant, was provided with a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, which contains the phone number and access code to call into this hearing, when he filed this application.

The NODRP 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 NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days to issue a written decision, after this hearing date.

The tenant received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the tenant to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenant to provide sufficient evidence of his claims, since he chose to file this application on his own accord.

The following RTB *Rules* are applicable and state the following, 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...

I find that the tenant did not properly present his evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

The tenant submitted documents as evidence but failed to review or explain them in sufficient detail during this hearing. He did not point me to specific pages, provisions, or details of his documents.

This hearing lasted 43 minutes, so the tenant had ample time to present his evidence and respond to the landlord's submissions. I repeatedly asked the tenant if he had any other information to present and if he wanted to respond to the landlord's submissions, during this hearing.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the evidence and testimony of both parties.

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on September 30, 2022, and filed his application to dispute it on October 7, 2022. Accordingly, I find that the tenant's application was filed within the 10-day time limit under the *Act*. Where the tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove the grounds on which the 1 Month Notice is based. I informed both parties of the above information during this hearing.

I am satisfied that the landlord issued the 1 Month Notice for a valid reason. I find that the landlord provided sufficient evidence that the tenant and his son, who is a person permitted on the property by the tenant, significantly interfered with and unreasonably disturbed other occupants and the landlord at the residential property.

I accept the affirmed testimony of the landlord's agent at this hearing and the landlord's documentary evidence. The landlord's agent referenced the landlord's documents during this hearing, pointing me to specific page numbers and details.

I find that the landlord provided sufficient evidence in the form of posted notices from October 2019 to July 2022, in the residential building, showing that minors must be accompanied by adults, including outside and in the pool area at the residential

property. I find that the landlord provided sufficient evidence in the form of warning letters from July 2021 to September 2022, to the tenant, regarding his and his son's behaviour, and the fact that it could lead to an eviction and a 1 Month Notice. The landlord's evidence provides police file numbers and an incident report to ICBC regarding the car incident.

I find that the landlord provided sufficient evidence in the form of 8 written complaint letters from 7 different witnesses, ranging from June to October 2022. These letters are from other occupants in the residential building, stating that they or their children have been the victims of physical or verbal altercations with the tenant and his son, including where the tenant's son was causing noise and disturbance in the hallways, spitting on other children during covid, fighting with other children, and throwing a rock at a car.

I find that the tenant did not dispute the authenticity of the landlord's documents during this hearing. The tenant simply made a general statement that the landlord's agent and all of her witnesses were lying. The tenant did not request a summons prior to or at this hearing, to cross-examine the landlord's witnesses, regarding the contents of their statements, which is permitted by the *Rules*. The tenant agreed in his testimony that his son threw a rock that hit the landlord's agent's car. The tenant agreed in his testimony that his son was causing noise and disturbance in the hallways. The tenant did not dispute that the police were contacted by the landlord, regarding his son's behaviour.

I find that the tenant did not provide sufficient documentary or testimonial evidence to dispute the landlord's 1 Month Notice, documents, or testimony. The tenant provided one photograph of the landlord's agent's car parked near the pool area and his own written statement disputing the landlord's 1 Month Notice. The tenant did not review these documents in sufficient detail during this hearing, as noted above. The tenant did not provide any other documents, including witness statements, for this hearing. The tenant did not have his wife, son or any other witnesses participate in this hearing, to provide witness testimony. The tenant stated that his wife was present during this hearing, but she would not participate.

As I have found one of the reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

I find that the landlord has not waived its right to enforce the notice. The landlord provided copies of three rent receipts, indicating "use and occupancy only," issued to the tenant for payment of October, November and December 2022 rent to the landlord, after the effective date of October 31, 2022, on the notice. The landlord did not

withdraw its 1 Month Notice and continued to pursue an eviction of the tenant at this hearing.

In accordance with section 47(5) of the *Act*, this tenancy ended on October 31, 2022, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 31, 2022. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession against the tenant, pursuant to section 55 of the *Act*. The effective date of October 31, 2022, on the notice, has long passed. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*.

Since I have ended this tenancy, I am not required to make a decision regarding the tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement. This claim only relates to an ongoing tenancy. This portion of the tenant's application is dismissed without leave to reapply.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord. This portion of the tenant's application is dismissed without leave to reapply.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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