



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0955047 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDL-S, MNDCL-S, FFL

Introduction

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

- an order of possession for cause, pursuant to section 55;
- a monetary order of \$13,300.00 for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, totalling \$2,500.00 (collectively "deposits"), pursuant to section 38; and
- authorization to recover the \$100.00 filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 38 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:38 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NODRP"). I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord called a witness, who is the landlord's real estate agent. She was immediately excluded from the outset of this hearing, as she was present in the same room with the landlord's agent. She returned to testify from 11:15 a.m. to 11:19 a.m., and then left the room and the hearing, after her testimony was completed.

The landlord's agent and the landlord's witness provided their names and spelling. The landlord's agent provided his email address for me to send a copy of this decision to the landlord after the hearing.

The landlord's agent confirmed that he is the president of the landlord company ("landlord") named in this application and that he had permission to speak on its behalf at this hearing. He stated that the landlord owns the rental unit. He provided the legal name of the landlord. He provided the rental unit address.

Rule 6.11 of the RTB *Rules* does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord's agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord's agent. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Preliminary Issues – Service of Documents and Amendment

The landlord's agent testified that he personally served the tenant with the landlord's application for dispute resolution hearing package on October 1, 2022. The landlord's witness testified that she witnessed the above service on the above date. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's application on October 1, 2022.

The landlord's agent testified that he served the tenant with the landlord's evidence package on December 13, 2022, by way of registered mail to the rental unit, where the tenant is still residing. The landlord's agent provided a Canada Post tracking number verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence on December 18, 2022, five days after its registered mailing.

The landlord's agent testified that he personally served the tenant with the landlord's amendment on January 14, 2023. The landlord's witness testified that she witnessed the above service on the above date. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's amendment on January 14, 2023.

The landlord's agent testified that he personally served the tenant with the landlord's One Month Notice to End Tenancy for Cause, dated July 19, 2022 ("1 Month Notice") on

the same date. The landlord's witness testified that she witnessed the above service on the above date. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's 1 Month Notice on July 19, 2022.

The landlord provided an amendment form to add a monetary claim for unpaid rent of \$7,500.00. This form was uploaded as evidence to the online RTB dispute access site by the landlord. This form was not filed properly by the landlord at the RTB, in order to amend the landlord's application and add a monetary claim. Therefore, the landlord's application is not amended at this hearing to add a monetary claim for unpaid rent, as the landlord did not file the amendment form properly, prior to this hearing, despite having ample time to do so, since this application was originally filed on September 15, 2022, approximately 4.5 months prior to this hearing on January 30, 2023.

Preliminary Issue – Severing the Landlord's Monetary Application

The following RTB *Rules* are applicable and state (my emphasis added):

2.3 Related issues

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, 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.***

Rules 2.3 and 6.2 of the RTB *Rules* allow me to sever issues that are not related to the landlord's main urgent application. The landlord applied for 5 different claims in this application.

The landlord was provided with a priority hearing date, due to the urgent nature of its application for an order of possession for cause. I informed the landlord's agent that this was the central and most important, urgent issue to be dealt with at this hearing.

I notified the landlord's agent that the landlord's monetary claims, totalling \$13,300.00, were severed and dismissed with leave to reapply. The landlord's monetary claims are non-urgent lower priority issues, and can be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. I notified the landlord's agent that the landlord can file a new application, if it wants to pursue its monetary claims in the future. The landlord's agent confirmed his understanding of same.

Issues to be Decided

Is the landlord entitled to an order of possession for cause based on the 1 Month Notice?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This tenancy began on April 1, 2021. Monthly rent in the current amount of \$2,500.00 is payable on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 were paid by the tenant and the landlord continues to retain both deposits in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

A copy of the 1 Month Notice was provided for this hearing. The landlord's agent stated that the effective move-out date on the notice is August 31, 2022. He said that the notice was issued for the following four reasons, which he read aloud during this hearing:

- *Tenant is repeatedly late paying rent.*
- *Tenant has allowed an unreasonable number of occupants in the unit/site*
- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord's agent testified regarding the following facts. The tenant was repeatedly late paying rent in January, February, and March 2022. The tenant was 3 to 4 days late after the first of the month when paying rent each month. The landlord does not have the dates for the late rent payments because he did not know he would be asked this question during this hearing. Regarding the illegal activity reason on the 1 Month Notice, the tenant stopped the landlord's agent from working next door and caused "violence." The landlord's agent went back to work after this incident and did not call the police or file a report. The tenant does not have any arrests or criminal convictions against him.

The landlord's agent stated the following facts. Regarding the unreasonable number of occupants reason on the 1 Month Notice, the tenant has 1 person, who is his sister, living at the rental unit but she is not allowed to live there. There is also someone living at the RV on the property. On July 19, the landlord's agent performed an inspection, but the tenant would not let him into the trailer. The rental unit is a 3-bedroom house with a fenced yard and the tenant already lives there with his two kids and girlfriend. The landlord sent a letter regarding too many people in the unit to the tenant. The tenancy agreement says that only the tenant is allowed to reside at the rental unit. The landlord provided notices to enter to the tenant, regarding the damages at the property. The tenant did not allow the landlord's realtor to take a photo of the rental unit, in order to sell it. The landlord was unable to list the house for sale because of that. Regarding the significant interference and unreasonable disturbance reason on the 1 Month Notice, the tenant did not allow the landlord's agent to work next door and called him names and used bad language. The tenant has not disputed the landlord's allegations.

Analysis

Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove this application. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines requires the landlord to provide evidence of its claims, in order to obtain an order of possession against the tenant.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord's agent testified that he served the above documents to the tenant, as required. The landlord received the NODRP document from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *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. I informed the landlord's agent that I had 30 days to issue a written decision after this hearing. He affirmed his understanding of same.

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

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 38 minutes and only the landlord's agent attended, not the tenant. The landlord's agent had ample time and multiple opportunities to present his submissions and evidence. During this hearing, I repeatedly asked the landlord's agent if he had any other submissions and evidence to present.

During this hearing, I was required to ask the landlord's agent specific questions about the 1 Month Notice, in order to make this decision. The landlord was sorting through his paperwork trying to find information throughout this hearing.

The landlord's agent did not sufficiently review the landlord's documents, submitted as evidence for this hearing. He mentioned the existence of documents but failed to explain them in sufficient detail during this hearing. He referenced different documents labelled with letters but did not name his documents with letters, when he uploaded them to the online RTB dispute access site. He failed to point me to the correct documents during this hearing.

On a balance of probabilities and for the reasons stated below, I find that the landlord failed to provide sufficient evidence that it issued the 1 Month Notice to the tenant for a valid reason, as required by section 47 of the Act.

Repeated Late Rent

I find that the landlord failed to provide sufficient evidence that the tenant was repeatedly late paying rent to the landlord during this tenancy.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. The landlord's agent testified that rent was due on the first day of each month for this tenancy.

Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..."

On page 2 of the details of cause on the 1 Month Notice, the landlord indicated that the tenant was late paying rent in January, February and March 2022. The landlord's agent testified that he did not know the dates when the tenant paid the rent late, during the above months. He claimed that he did not have all of his documents in front of him during this hearing, because he was not in his office, and he did not think he would be asked this question. He said that the rent was paid "3 or 4 days late" after the first of each month.

I find that the landlord failed to provide specific late rent payment dates and the landlord's agent failed to point me to documentary evidence to support same during this hearing.

Unreasonable Number of Occupants

I find that the landlord failed to provide sufficient evidence that the tenant has allowed an unreasonable number of occupants in the rental unit.

The landlord indicated on the details of cause on page 2 of the 1 Month Notice, which the landlord's agent read aloud during this hearing, that the tenant allowed his sister to live with him in the rental unit and there were "complaints" that "someone" was occupying the "recreational vehicle parked in the yard."

During this hearing, the landlord's agent stated that the tenant, his girlfriend, his two children, and his sister were living in the rental unit. He claimed that the tenant's sister was not named in the tenancy agreement, so she was not allowed to be there. The tenant's girlfriend and children were not referenced in the details of cause on the landlord's 1 Month Notice, only the tenant's sister.

I find that the landlord failed to provide sufficient evidence that the tenant's sister is actually occupying the rental unit with the tenant, and that she is not a temporary guest. I find that the landlord failed to provide sufficient evidence that "someone," whose name was not identified or provided at this hearing, is occupying an RV parked at the

property, who is permitted by the tenant. I find that the tenant's sister, who is one person, does not constitute an unreasonable number of occupants, even if she is occupying the rental unit with the tenant.

Significant Interference or Unreasonable Disturbance

I find that the landlord failed to provide sufficient evidence that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find that the landlord failed to show that the tenant engaged in a pattern of behaviour causing "significant" interference or "unreasonable" disturbance. The landlord's agent referred to one incident, during this hearing, where he said the tenant stopped him from completing work next door causing "violence." However, the landlord's agent did not contact the police or file a complaint and he went back to work after the incident. I do not find name-calling or "bad language" during this one incident, to qualify as "significant" interference or "unreasonable" disturbance.

Illegal Activity

I find that the landlord failed to provide sufficient evidence that the tenant or a person permitted on the property by the tenant, has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

Illegal activity is defined in Residential Tenancy Policy Guideline 32, which states, in part, at page 1 (my emphasis added):

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the

illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

I find that the landlord failed to provide sufficient evidence the tenant or a person permitted on the property by the tenant, committed a serious violation of a federal, provincial or municipal law, as per Residential Tenancy Policy Guideline 32, above. The landlord has the burden of proving that the activity was illegal, as noted above. The landlord did not provide a copy of the relevant statute or bylaw, to the RTB or the tenant, as noted above. The landlord's agent did not testify about the above information, at all, during this hearing.

The landlord did not provide evidence of any criminal charges or convictions against the tenant, nor any police reports or police officers as witnesses to testify at this hearing. The landlord's agent said that he did not call the police, he did not provide any police reports, and he went back to work after the tenant allegedly stopped him from working next door.

1 Month Notice and Filing Fee

Section 47 of the *Act* requires the landlord to issue a 1 Month Notice for a valid reason. The tenant did not appear at this hearing, provide written evidence, or dispute the landlord's 1 Month Notice. However, I find that the landlord's 1 Month Notice does not comply with section 52 of the *Act*, because the landlord did not issue the notice for a valid reason.

Accordingly, the landlord's application for an order of possession for cause is dismissed without leave to reapply. The landlord's 1 Month Notice, dated July 19, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was unsuccessful in its application for an order of possession, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's application for a monetary order of \$13,300.00 for damage to the rental unit and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, and authorization to retain the tenant's deposits, is dismissed with leave to reapply.

The remainder of the landlord's application is dismissed 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 30, 2023

Residential Tenancy Branch