



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding NGA HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord and recovery of the cost of the filing fee.

The tenant's agent/representative/cousin (agent/TB), the landlord and the landlord's witness were present for the start of the hearing. All parties were affirmed and the witness was excluded until their time to testify. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

The agent submitted evidence showing the landlord was served the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on November 12, 2022. As the Residential Tenancy Branch (RTB) provided the application package to the tenant on November 9, 2022, to serve on the landlord, I find the tenant served the landlord within the required timeline.

The landlord confirmed receipt of the tenant's application. Neither party presented an objection to the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision.

Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Neither party provided a full copy of the 1 Month Notice. I was not provided the second page of the Notice which listed the reasons for ending the tenancy, along with the details of causes. The landlord agreed that he could upload a full copy into the RTB digital file after the hearing. I note the landlord did file a full copy shortly after the hearing, and the reasons listed were the ones given by testimony at the hearing. As the testimony matched the Notice, I find I now have a full copy of the 1 Month Notice.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice to end the tenancy?

Should the Notice be cancelled or enforced?

Background and Evidence

No written tenancy agreement was filed in evidence. The landlord said the tenancy began approximately 9 years ago. The rental unit is located in a nine-unit apartment building.

In accordance with the Rules, the landlord proceeded first to prove the causes listed on the Notice.

The Notice was dated October 20, 2022, for an effective move out date of November 30, 2022. The tenant confirmed receiving the Notice when it was attached to their door.

The causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

2. Tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.
3. Tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.
4. Tenant has not done repair damage to the rental unit or other residential property, within a reasonable time.

In the Details of Causes portion of the Notice, the landlord wrote that the *"apartment has garbage throughout and is not sanitary. Risk of rodent infestation. Risk of fire due to items against the heaters and electrical outlets.*

[Reproduced as written]

In a written submission, the landlord provided the following:

My name is [] owner of the building at []. It is a 9 unit low rise building consisting of 12 residents.

Approximately 4 years ago the unit had a flood and needed repairs. A fresh paint job and new flooring installed. Cleaned and ready for [] to move in. At that time I had made it very clear that the apartment was to stay in a clean and organized manner. [] had agreed he would keep it that way.

Around October 13 2022, there was a leak in the apartment and I had come in to see the damage. There was a leak from the outside siding and the water came into the ceiling of the apartment.

The water damage was in one area of the ceiling.

When I entered the apartment I was shocked at the condition of the apartment. It was sad to see the state it was in. It was disgusting.

I removed the areas where the damage was done and also removed the bathroom fan so it could be replaced.

I asked [] to have the area cleaned up and that we are lucky that he did not cause a fire with the condition the apartment was in. This was not the first time the apartment has been in this condition. Several times I had spoken to [] and he would say that he was working on cleaning it up.

I am very concerned about the safety and health of other residents in the building.

I am concerned that the state of the apartment will continue to be a concern and that an infestation of pests, rodents or a fire will be caused if I continue to have [] living in the building.

[Reproduced as written except for anonymizing personal information to protect privacy]

In summary and relevant part, the landlord testified to the following: The landlord asked the tenant to remove his belongings in order to make repairs and the tenant failed to do so. The state of the rental unit presents a fire and safety risk to all the other tenants in the property, particularly with the flammable material being put on the electric baseboard heaters, such as paper, lighters, and tissues. The tenant has a propane tank, a fire pit, and tools in the rental unit, along with extreme clutter. The tenant smokes cigarettes and marijuana in the rental unit, which are sources of ignition. The tenant has his couch pushed against the baseboard heaters and leaves many objects on the heater. The tenant's sink was filled with dirty, moldy dishes. The landlord has the responsibility to ensure the safety of all the residents in the property.

The landlord submitted photos of the rental unit taken in October 2022 after the tenant called to report a leak.

Landlord's witness

The landlord's witness testified to the following: The witness was called to the rental unit to deal with the drywall remediation after the leak was reported. The witness attempted 3 times to make the repairs, but there was too much clutter. The rental unit was "filthy" and "disgusting", and finally, they were forced to move the tenant's belongings out to the way, as the tenant failed to do so. The tenant's floors and baseboard heater contained melted substances on top of them.

Rebuttal of the tenant's agent

The tenant went to the rental unit after the leak was fixed to help with the painting. The tenant was disabled for a period of time, starting in November 2022, and lost their driver's licence, and was therefor unable to drive to the rental unit to help clean. The agent denied that the tenant turned on the heat register. They have offered to the landlord that they will help the tenant keep the rental unit tidied.

Analysis

Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is

based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

A landlord does not have to provide sufficient evidence for all causes, only on one, to meet their burden of proof.

Upon review of the 1 Month Notice to End Tenancy, I find that Notice to be completed in accordance with the requirements of section 52 of the Act.

After reviewing the evidence, I find the landlord had sufficient reason to end the tenancy when they issued the 1 Month Notice to the tenant on October 20, 2022.

After considering all of the written, photographic, and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant and put the landlord's property at significant risk.

I have given significant weight to the landlord's photographs, which show an extreme amount of clutter, including a propane tank, a fire pit, and a considerable amount of flammable material on the baseboard heaters. The photographs show fast food containers, food and drink items, and unidentified objects on top of the baseboard heaters, and papers and plastics under and around the baseboard heater.

I find the photographs of the dirty dishes spilling over from the kitchen sink and clutter represents a health and safety issue and proves that the tenant has not maintained the rental unit according to health, cleanliness and sanitary standards.

The tenant has not submitted evidence showing the state of the home currently or from anytime after the 1 Month Notice was issued indicating an improvement in the situation. The tenant's agent said they would help the tenant maintain the rental unit, yet I did not see any evidence that there had been an improvement since the 1 Month Notice was issued.

Taken in totality, I find the landlord has submitted sufficient evidence to prove the two above noted causes on the Notice, as I find the state of the tenant's rental unit represents a fire and safety risk. The landlord must protect the safety of all other residents in the building.

For this reason, I find it was not necessary to consider the other evidence and testimony submitted relating to other issues listed on the 1 Month Notice.

For this reason, I **dismiss** the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the 1 Month Notice dated October 20, 2022 valid, supported by the landlord's evidence, and therefore, enforceable. I therefore uphold the Notice and I **order** the tenancy ended on the effective date of that Notice, or November 30, 2022.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable **two (2) days after service on the tenant**.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the 1 Month Notice is dismissed, without leave to reapply, as I find the landlord submitted sufficient evidence to support their 1 Month Notice.

The landlord has been issued an order of possession for the rental unit, effective two days after service on the tenant.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 06, 2023

Residential Tenancy Branch