



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, LRE

Introduction

This hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated October 11, 2022 (the "One Month Notice") pursuant to section 47; and
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1).

The Landlord's agent MF and one of the Tenants, DES, attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

MF acknowledged receipt of the Tenants' notice of dispute resolution proceeding package (the "NDRP Package"). I find the Landlord was served the NDRP Package in accordance with section 89 of the Act.

The Tenants submitted documentary evidence including a copy of the One Month Notice and letters from the Landlord. I find the Landlord would have already had copies of such documents. As such, I find the Landlord was sufficiently served with the Tenants' evidence pursuant to 71(2)(c) of the Act.

DES acknowledged receipt of the Landlord's documentary evidence. I find the Tenants were served with the Landlord's evidence in accordance with section 88 of the Act.

Preliminary Matter – Severing of Unrelated Claim

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

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.

(emphasis added)

I find the most important issue in this application is whether this tenancy will be ending under the One Month Notice. I find the Tenants' claim to suspend or set conditions on the Landlord's right to enter the rental unit to be unrelated to the issue of whether the tenancy will be ending. As such and pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss this unrelated claim with leave to re-apply.

Issues to be Decided

1. Are the Tenants entitled to cancel the One Month Notice?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments

relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on October 12, 2017 with a previous landlord. The Landlord took over management of the building on September 1, 2022. Rent is currently \$956.50 due on the first day of each month. The Tenants paid a security deposit of \$450.00. The parties agreed that there was a written tenancy agreement, though no copy has been submitted into evidence.

The One Month Notice issued by the Landlord has an effective date of November 11, 2022. It states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The details of cause on the One Month Notice state:

Upon unit inspection on Sept 21/22 it was found that tenants unit has an unhealthy and unsanitary condition. As per RTA sec 32(2) and 32(3) and TA sec 10(2)(a) tenant must maintain reasonable health, cleanliness and sanitary standards. Tenant in a breach of TA. Notice to re-inspect was served Sept 22/22, 14 days notice to return property to reasonable standards of health and cleanliness. Unit re-inspected Oct 11/22. Unit still the same, no improvements

DES acknowledged receipt of a copy of the One Month Notice in person on October 11, 2022.

MF gave the following testimony. After taking over management of the property, the Landlord had all units in the building inspected. An employee of the Landlord at the time, DL, inspected the rental unit on September 21, 2022. DL found the rental unit to be completely full to the ceiling with the Tenants' personal belongings. There were items stacked on the floor and counter, as well as food on the floor. The situation was described as dangerous, unsanitary, and a fire hazard.

MF referred to a letter to the Tenants from the Landlord dated September 22, 2022. This letter advised the Tenants that there would be a re-inspection on October 11, 2022, since the rental unit was not up to reasonable standards of health and cleanliness. MF confirmed there was no change to the rental unit when DL went back for the re-inspection in October 2022.

According to MF, she personally attended the rental unit for another inspection on February 21, 2023 and took photos. MF explained that she had wanted to re-acquaint herself with the situation in the rental unit. MF stated that she wanted to see if there had been any changes so that the One Month Notice could possibly be set aside. MF described that there was no change to the condition of the rental unit.

The February 21, 2023 photos submitted show that the rental unit remains highly cluttered. The Landlord's written submissions contain the following observations (paraphrased):

- Small area to access the bedroom. The rest of the room is piled with clothing, boxes, and other items. Hazardous for fire and safety issues.
- Kitchen surfaces are covered with food containers. Items stored on the stovetop are a fire hazard. Boxes are piled high in the kitchen area. Food is stored on the floor and will worsen rodent issue in the building.
- Area leading into living room has items piled higher than standing height.
- Living room has small clearing but is stacked around to the ceiling with cardboard boxes and other items.

MF stated that it has been more than four months since the inspections, and there haven't been any changes in the condition of the rental unit. MF stated that the Tenants gave excuses and reasons why they can't clean the rental unit, but the Landlord is concerned about safety and sanitary issues affecting other tenants in the building. MF stated that the Landlord is agreeable for the Tenants to move out by April 30, 2023.

DES described the following circumstances affecting her ability to clean the rental unit. DES is in her 70s and has pain from a car accident in 2010. The other tenant, DES's adult son DDS, has a disability. DES's husband passed away approximately six months ago. The Tenants are in the process of arranging storage for their belongings but do not have a car. The Tenants want to continue residing in the rental unit and be given more time to clean. DES stated that she did not want the Landlord's agents to inspect the rental unit or take pictures.

Analysis

1. Are the Tenants entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenants were served with the One Month Notice in accordance with section 88(a) of the Act on October 11, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records indicate that the Tenants submitted this application on October 19, 2022. I find the Tenants made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Sections 47(1)(d)(ii), (d)(iii), and (h) of the Act state as follows:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

[...]

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

[...]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

In this case, I have reviewed the photos of the rental unit taken on February 21, 2023. I find the photos show that the rental unit is highly cluttered. I find there are items covering all surfaces in the kitchen, including items stacked on the countertop, stovetop, above the fridge and cabinets, and on the floor. I find there is food stored on the floor.

I find the items piled on top of and around the stovetop create a serious fire hazard. I find this fire hazard is further exacerbated by the general clutter in the rental unit, including piles of cardboard boxes, clothing, and personal belongings in the living room and bedroom.

I find the Tenants were given a written warning on September 22, 2022 and an opportunity for re-inspection in October 2022. I accept the Landlord's evidence that there was no improvement in the condition of the rental unit as of February 2023. I find there is insufficient evidence of any efforts made by the Tenants to remediate the situation in the rental unit since the first inspection.

Under these circumstances, I find the Tenants have put the Landlord's property at significant risk of damage.

I conclude the Landlord has established cause for ending this tenancy under the One Month Notice pursuant to section 47(1)(d)(iii) of the Act. I find it is not necessary to consider whether the Landlord has also established the other causes stated in the One Month Notice.

The Tenants' application to cancel the One Month Notice is dismissed without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenants' application, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

I find the Tenants will need more time to vacate the rental unit due to their personal circumstances and having resided in the rental unit for several years. I find the Landlord agreed to a move-out date of April 30, 2023. As such, I find it would be appropriate to extend the effective date of the One Month Notice to April 30, 2023.

Pursuant to section 55(1) of the Act, I grant the Landlord an Order of Possession for the rental unit effective 1:00 pm on April 30, 2023.

Conclusion

The Tenants' claim to dispute the One Month Notice is dismissed without leave to re-apply. The Tenants' claim regarding the Landlord's right to enter the unit is severed

under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limits.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm** on **April 30, 2023**. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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*.

March 29, 2023

Residential Tenancy Branch