



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 631 COMMERCIAL DR HOLDINGS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The tenant confirmed receipt of the 1 Month Notice dated November 4, 2022, which was posted on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find the 1 Month Notice deemed served on November 7, 2022, 3 days after posting.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2012. Monthly rent is currently set at \$1,477.00, payable on the first of the month. The landlord holds a security deposit of \$675.00 for this tenancy.

The landlord issued a 1 Month Notice to End Tenancy on November 4, 2022, providing following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The 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;
3. The tenant or a person permitted on the property by the tenants has put the landlord's property at significant risk;
4. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that they are requesting an Order of Possession pursuant to the 1 Month Notice. The landlord testified that the tenant has put the property at significant risk, and have caused considerable damage due to the tenant's negligent actions. The landlord listed a series of events that have taken place including the following:

- 1) July 31, 2021: tenant left air conditioning unattended, causing water to leak below;
- 2) October 23, 2022: an emergency plumbing call cost the landlord \$2,751.00 due to a leak to the commercial unit/restaurant below. The plumber's report stated that the leak was due to a blocked bathroom sink and junk trap from the tenant's unit. The toilet was blocked, and a hair clip was found in the toilet plumbing. The plumber also found that the kitchen sink was blocked due to straws inside the pipe;
- 3) November 1, 2022: the tenant left the bathtub running with the drain plug in, causing a flood.

The landlord submitted invoices for the above incidents, and stated that the landlord had suffered a considerable financial loss due to these incidents. The landlord is

concerned that the tenant has failed to acknowledge the considerable risk that their behaviour has caused, and is concerned about future incidents that not only affect the tenant's suite, but other units, the landlord's property, and the commercial business below.

The landlord testified that they took ownership of the property on August 31, 2017, and at the time the building was in a bad state. The landlord testified that they have spent a considerable effort and money to bring the building back up to better living standards, including providing the tenant with a new dishwasher, fixing the tenant's stove and window, and addressing the tenant's repair requests. The landlord denies that the referenced events noted on the 1 Month Notice are due to maintenance issues.

The landlord included warning letters and invoices related to the above incidents, as well as receipts for repairs and new appliances purchased for the tenant's suite such as the dishwasher delivered in January 2022.

The landlord included the warning letter dated August 5, 2021 about the leak in the tenant's unit. The landlord stated in the letter that the portable air conditioning unit was left unattended, and was leaking. The landlord stated that they were able to mitigate their losses by reacting quickly.

The landlord submitted an invoice dated October 23, 2022 for \$2,751.00 related to an emergency call for a sewer backup on the first floor. The invoice states that the bathroom sink, toilet, and kitchen sink were blocked, and objects and junk had to be cleaned out of the traps and pipes.

An invoice for \$798.89 was submitted, dated November 22, 2022 related to cleaning the water leak caused by the overflowing tub.

The tenant feels that the landlord's claims are misleading and false, and states that the building is in a bad state of disrepair since moving in in 2012. The tenant testified that the plumbing was original, and that there were many pre-existing problems.

The tenant submitted letters from previous tenants who resided in the building. One tenant resided there from 2012 to 2014. The tenant described many issues they faced, including plumbing issues. Another letter was submitted from the tenants below, who resided there from April 2016 to March 2018. The tenants stated that their suite was not in very good shape, and that the new owner refused to perform repairs. The tenants stated that the plumbing leaked, and was threatened and harassed by management.

The tenant testified that the air conditioning leak took place when the tenant was out of town, and had two neighbours checking in on the tenant's cats during the heat wave. The tenant testified that they had to leave the air conditioning on for the well-being of the cats. The tenant testified that the damage was not bad, and that the landlord never sent the invoice to the tenant following the incident.

The tenant testified that the overflow incident in October 2022 was due to the bad plumbing, and not the tenant's actions. The tenant testified that although the landlord did replace the old appliances, which was beyond their useful life, the landlord did not perform repairs to the plumbing, which originated from the 1920s.

The tenant read a letter from the previous owner in the hearing, which was described as "very old" with original plumbing and electrical. The letter also described problems with sewage backup.

The tenant testified that the third incident was due to the tenant's "intense brain fog". The tenant testified that they suffer from fibromyalgia, and is now properly medicated. The tenant testified that they had completely forgotten that they had turned the bathtub faucet on, and the incident was an accident. The tenant denies that the incident had caused considerable damage, and that the blocked overflow drain contributed to the damage and loss.

The tenant also submitted correspondence about plumbing problems and repairs, and photos of the suite, including the overflow drain which the tenant felt was faulty. The tenant felt that the landlord was intent on ending the tenancy as the tenant's rent was lower than the current market rate, and is not justified considering the circumstances and poor maintenance of the building.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

In light of the evidence and testimony before me, I have no doubts that the building and its components are old, including the plumbing. I have taken in consideration the age of the building, and how this may have contributed to the issues referenced in this application and the 1 Month Notice.

The question is about whether the landlord has established grounds for ending this tenancy on the basis of the 1 Month Notice. In light of the evidence before me, I am not satisfied that the tenant can be blamed for the incident that took place in October 2022. There appears to be history of backups in the plumbing, which has affected other suites.

I find, however, that the tenant did contribute to the damage that took place on July 31, 2021 and November 1, 2022, and in particular the tenant's negligent actions that could have caused considerable loss and damage to the property. In the first incident, the tenant admitted that they had left the air conditioning unit unattended while they were away. Although the tenant provided an explanation for why they did this, and did note that they had neighbours checking in on the unit and their cats, I find that these actions could have likely caused even more damage if the leak was not discovered in a timely manner. I do not find that this incident is related to the landlord's poor maintenance of the building.

I find that the third incident that took place on November 1, 2022 was also due to the tenant's negligent actions. The tenant admitted to forgetting about the fact that they had left the bathtub faucet on. Although the tenant testified that there were other contributing factors such as their brain fog and a faulty overflow drain, the responsibility is still on the tenant to ensure that care and attention is taken to prevent such issues. I find that the main reason for the overflow was the tenant's actions—specifically the fact that the tenant had turned on the faucet, and leaving the room, forgetting about it. I am not satisfied that the main source of the leak was the faulty overflow drain.

I am satisfied that the landlord has established that they have cause to end this tenancy. I find that the negligent actions of the tenant contributed to the two incidents that took place within a span of less than two years, and even more worrisome is the fact the tenant seems to dismiss the seriousness of these incidents, and the potential damage that could have been caused. I find that the tenant not only fails to acknowledge the seriousness of their actions, but blames the issues on the other factors instead. I do not find that this blame is justified in these two incidents.

I am not convinced that the tenant acknowledges how their actions have contributed to the losses and damage suffered by the landlord in July 2021 and November 2022. I find that the landlord has provided sufficient evidence to support that the behaviour of the tenant not only puts the property at significant risk, but also the lawful right of the other tenants and business who occupy the building. I therefore dismiss the tenant's application to cancel the 1 Month Notice without leave to reapply.

Section 55(1) of the *Act* reads as follows:

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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, December 31, 2022. In this case, this required the tenant and anyone on the premises to vacate the premises by December 31, 2022. As this has not occurred, I find that the landlord is entitled to an Order of Possession against the tenant, pursuant to section 55 of the *Act*.

The tenant submitted a request that they be provided with additional time to move out. In this case, the landlord agreed to extending the standard 48 hours to allow the tenant until April 30, 2023 to move out. I find this date to be reasonable, and would allow the tenant approximately half a month to move out. The landlord is therefore granted an Order of Possession effective 1:00 p.m. on April 30, 2023.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on April 30, 2023, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The tenant's application is dismissed without leave to reapply.

I find that the landlord is entitled to an Order of Possession.

I grant an Order of Possession to the landlord effective 1:00 p.m. on April 30, 2023. Should the tenant 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: April 14, 2023

Residential Tenancy Branch