



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application, filed on December 21, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated December 12, 2022, and effective February 5, 2023 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, 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 62 minutes from 9:30 a.m. to 10:32 a.m. The landlord left the hearing from 10:20 a.m. to 10:21 a.m. I continued with the hearing in the absence of the landlord, as his agent was present as his elected representative.

The landlord intended to call "witness BH," who was excluded from the outset of this hearing. He left the hearing at 9:35 a.m. He did not return to testify. At the end of this hearing, the landlord and his agent affirmed that they did not want to call witness BH to testify. The tenant did not object to or dispute same.

The landlord and his agent both agreed that they were given the opportunity to call witness BH but they declined to do so. I informed them that I would grant an adjournment of this application, since this hearing did not complete within the 60-minute maximum hearing time, and witness BH could testify at a future reconvened hearing.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send copies of this decision to both parties after the hearing.

The landlord confirmed that he owns the rental unit. He provided the rental unit address. He confirmed that his agent, who is his daughter, had permission to represent him at this hearing. He identified himself as the primary speaker for the landlord at this hearing.

The landlord affirmed that he did not require any personal hearing assistance at this hearing. I repeated and rephrased information to him throughout this hearing. I cautioned the landlord's agent about interrupting and speaking at the same time as the tenant during 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, all hearing participants 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, which I answered. They did not make any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given multiple opportunities to settle this application at the beginning and end of this hearing and declined to do so.

I repeatedly cautioned the tenant that if I dismissed her application without leave to reapply, I would uphold the landlord's 1 Month Notice, end her tenancy, and issue a two (2) day order of possession against her. The tenant repeatedly affirmed that she was prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord that if I cancelled his 1 Month Notice, I would not issue an order of possession to him against the tenant, and this tenancy would continue. The landlord repeatedly affirmed that he was prepared for the above consequences if that was my decision.

The landlord 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 testified that he served the tenant with the landlord's 1 Month Notice on December 12, 2022. The tenant confirmed receipt on the above date as per the above service method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on December 12, 2022.

Issue 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 based on the 1 Month Notice?

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

Background and Evidence

While I have turned my mind to both parties' documentary and digital evidence and the testimony of both parties at this hearing, 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.

The landlord and the tenant agreed to the following facts. This tenancy began on December 15, 2021. No written tenancy agreement was signed by both parties. Monthly rent in the current amount of \$1,799.00 is payable on the first day of each month. Security and pet damage deposits of \$2,500.00 total were paid by the tenant and the landlord continues to retain these deposits in full. The tenant continues to occupy the rental unit. The rental unit is the right side of a duplex, with upper and lower suites. The landlord occupies the left upper suite of the same duplex with his wife. Other occupants occupy the left lower suite of the same duplex.

The landlord and the tenant agreed that the 1 Month Notice was issued to the tenant for the following two reasons on page 2, which the tenant read aloud 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.*

The landlord and the tenant agreed that the details of cause on page 2 of the 1 Month Notice states the following, which the tenant read aloud during this hearing:

*“Second Notice. First notice given April 5 2022.
Unsanitary premises. Very cluttered inside and outside.
Safety and fire risk.”*

The landlord testified regarding the following facts. The landlord provided evidence on a USB stick for this hearing. The rental unit is filled with clutter and is unsafe. There were fire trucks, a video of the clutter, and you cannot walk in the rental unit. It is unsafe and the tenant's items are piled up inside and outside the rental unit. The landlord cannot cut the grass outside and the neighbors and the landlord have complained about it. The complaints have fallen on “deaf ears,” as the rental unit is dirty and messy. The “fireman's report” says that the rental unit is very unsafe, a fire hazard, and they could not walk through the premises.

The tenant testified regarding the following facts in response. She is not aware of the neighbor's complaint and has never heard or seen proof of it. She has no idea why the landlord cannot cut the grass because the lawn is clear. The fire department report said that there is lots of stuff at the rental unit and it is hard to get into the rental unit, which is correct. The tenant wanted to donate these items in the rental unit. The fire department knocked these items over, and it was hard to walk through. A fire occurred and the tenant's monitored fire alarm went off. The landlord's fire alarm does not work. A fire occurred on the stove and the tenant complained that something was wrong with the stove at one point before that. She was not using the stove that day and does not know how the fire occurred.

The tenant stated the following facts in response. The tenant moved out of her former residence in March 2022, had to hire movers, suffered a hernia, and her moving boxes that she moved into the rental unit are still not unpacked. The landlord said that the boxes were stacked to the ceiling, but the tenant cannot unpack these boxes because they are stacked so high. She had her brother help her in the last month. She cannot lift these boxes and she had a surgery in June 2022. She has tried to sort through smaller boxes, which she can reach. Her doctor sent her for referral program counseling. She is part of a recovery group to figure out her problems, which is similar to a 12 step AA program, to help her figure out why she is depressed. Her doctor provided a letter

regarding the tenant's treated issues. The tenant is trying to get her stuff unpacked. She has had trauma for 6 years, including her divorce, cancer, dealing with her medical results, surgery, and her hernia. The landlord and his wife scream at the tenant in front of people, which is embarrassing for the tenant. The tenant has depression and is on medications to correct and balance it.

The landlord's agent testified regarding the following facts in response. The landlord provided a video of the fire, and it shows that when the fire department arrived, it was hard for them to get the door open, and the tenant said there was no fire, but the fire alarm went off and there was smoke in the kitchen. The tenant refused access to the fire department. There are other people living in the house and the parents of the landlord's agent could have died. Her mother led the fire department to the back door and in the video the fireman could be heard saying "please let me in" and the tenant refused access saying nothing was burning. This is a fire risk for the parents of the landlord's agent. There are other occupants living below her parents' unit. She is scared to visit her parents because there is a risk that the house could burn down. The fire department could not get down the hallway leading to the bedroom. The house that she grew up in does not look the same and is "unrecognizable." Her parents rented the unit to the tenant, thinking she was good. There are items covering the tenant's windows, so there is no exit through the windows because of this. This is a two-story house. It is a risk to the family of the landlord's agent, other occupants in the house, the city, and the firemen. The tenant did not want to open the door and luckily the mother of the landlord's agent led the fireman to the back door.

The landlord's agent stated the following facts in response. She misses her family. The clutter is so full inside the rental unit. There is a shed under the house and the tenant hides items behind the shed. In the 4 months leading up to this RTB hearing, the landlord's agent bought a blink camera for her parents, and it shows the tenant hiding and turning her back to the camera, as she brings more items to the front door. The tenant's habits are not getting better. The landlord tried to give the tenant a chance. The clutter outside can attract rodents. The tenant is using the storage room downstairs, which she is not entitled to do, and it is full of clutter, the furnace is located there, there is a fire risk, and no maintenance can be done there. In the text messages provided, the tenant claims that she will sort out her things but she is not being honest and brings more stuff, including garbage, which she says is not garbage. The landlord's video shows that the landlord's half of the duplex is clean and there is nothing there. The tenant has items up stacked up to the ceiling in every room.

The tenant testified regarding the following facts in response. Regarding the blinking camera of the landlord, the tenant does not bring things every day. She only shops for groceries on the weekends. She has plants on the back deck, which are not in the ground because the landlord would not allow her to have a greenhouse. The shed has outdoor furniture. The floor is clean, as she vacuums it, and she cleaned a stain. The rodents were there before she moved in, including raccoons and skunks. The stuff fell at the back of the shed. She has a plan to clean with her brother. She does not use the furnace because it causes her allergies, so she uses other heat.

The tenant stated the following facts in response. Because of her fire alarm, the fire department came to the rental unit. The fire alarm woke her up and she poured a cup of water on the stove and the fire went away. She was in the bathroom when the landlord and the fire department were knocking, so she came to the back door, she said nothing was burning, and they said they wanted to come in because there was smoke. The fire department came in and knocked over everything and made a mess, which took her a couple of days to clean. The fire chief came the following week and did not say there was a fire hazard or that she was being evicted. It was a tiny fire, not a big one, and it was due to her sensitive fire detector. There was no chance of anyone dying that night. The fire department chief was happy that she cleaned up and did not give her any notice. The fire department chief was surprised because her fire alarm was so sensitive.

Analysis

Burden of Proof and Rules

During this hearing, I notified both parties 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, is required to present her application, claims, and evidence. She was provided with an NODRP document from the RTB, which contains the phone number and access code to call into this hearing, when she filed this application. The NODRP is dated December 21, 2022.

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

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 and links to the RTB website and the *Rules* are provided in the same document. I informed both parties that I had 30 days to issue a written decision and they affirmed their understanding of same.

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 her claims, since she chose to file this application on her 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.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

...

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 sufficiently present her submissions, claims, or evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during two hearings, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 62 minutes total. Therefore, the tenant had ample time to present her submissions, claims, and evidence, and respond to the landlord's evidence. The tenant did not reference or explain her documentary or digital evidence submitted with her application, during this hearing.

Findings

The tenant stated the following on the RTB online dispute access site, as to why she was disputing the landlord's 1 Month Notice (doctor's surnames redacted where indicated by initials only, for confidentiality):

"I am currently dealing with multiple personal and health issues including serious depression. I am currently undergoing treatments to regain my emotional stability after a long list of personal and health issues that started in 2015. I had an intake appointment for Dr. [S] on Dec. 20, 2022 and have a scheduled Zoom appointment with that Doctor for March 13, 2023 at 2pm. I also have a follow up appointment with my Family Doctor - Dr. [K] on Jan 3, 2023 at 1:50 pm"

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within 10 days after the date the tenant received the notice. The tenant received the 1 Month Notice on December 12, 2022, and filed this application to dispute it on December 21, 2022. Therefore, the tenant is within the 10-day time limit under the *Act*. The burden shifts to the landlord to justify the reasons on the 1 Month Notice. I informed both parties of the above information during this hearing and they affirmed their understanding of same.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I find that the tenant significantly interfered with and unreasonably disturbed the landlord and other occupants at the residential property. As I have found one of the two reasons on the 1 Month Notice to be valid, I do not need to examine the other reason.

I accept the landlord's documentary evidence and the affirmed testimony of the landlord and his agent at this hearing.

I find that the tenant engaged in dangerous, risky, and unsafe behaviour at the residential property. I find that this caused significant interference and unreasonable disturbance to the landlord and his family, including his wife and daughter (agent), and other occupants at the residential property. I find that the landlord stated reasons and details for cause on the 1 Month Notice itself, a copy of which was provided by the tenant for this hearing.

The landlord provided photographs, videos, notices for inspection, and text messages to support the 1 Month Notice. The landlord's photographs and videos show the deplorable condition inside and outside the rental unit, including food and other items piled all over the kitchen stove, counters, and sink; boxes and other items stacked from floor to ceiling all over the rental unit, including the bedroom, kitchen, and hallways; items piled and cluttered all over the outside of the rental unit; no sign of reasonable ingress or egress to the rental unit; and a significant amount of clutter all over the rental unit.

The landlord's photographs and videos were labelled and indicate that they were taken after the landlord conducted multiple inspections of the rental unit in November and December 2022, and March 2023, both before and after the 1 Month Notice was issued to the tenant. The tenant did not dispute the landlord's evidence during this hearing or indicate that the evidence was an inaccurate or false representation of the condition of the rental unit.

I find that the landlord provided sufficient documentary and testimonial evidence regarding the urgency and seriousness of this situation. The landlord provided multiple breach letters from 2022 to 2023, documenting the unsafe condition of the rental unit, providing the tenant with multiple deadlines to comply, and multiple warnings that the tenant could be evicted based on multiple notices to end tenancy. The landlord provided multiple photographs and videos of the rental unit taken from 2022 to 2023, showing the unclean and dangerous conditions of the rental unit. The landlord and his

agent provided affirmed, undisputed testimony that the rental unit is a fire and health hazard for the landlord, his wife, his agent, and other occupants at the residential property. The landlord provided multiple text messages with the tenant, where the tenant agrees that there are cluttered items all over the rental unit and indicates she will clean and clear these items.

I accept the affirmed testimonial and documentary evidence of the landlord that the tenant left her rental unit in a deplorable condition since 2022, which became worse in 2023, after multiple warnings and 1 Month Notices were issued to the tenant. Both parties agreed that the tenant has not moved out and she has not fully corrected the fire, health, and safety hazards in the rental unit, since the landlord's inspections or the fire department visit.

The landlord provided a video from October 14, 2022, showing a fireman in uniform trying to force his way through the back door of the rental unit, the fireman yelling at the tenant to let him in because there was smoke, many tall, cluttered items blocking his access, and the tenant refusing access to him and saying that nothing was burning. The landlord's wife's voice can be heard yelling in the video, asking the tenant to let the fireman in and trying to help him force his way through the back door, due to the fire and smoke.

I find that the tenant did not provide sufficient documentary or digital evidence to support her application or to dispute the landlord's 1 Month Notice. She provided a copy of the 1 Month Notice as evidence, but she could not locate it during this hearing. She asked the landlord to walk over and provide a copy from next door, during this hearing. I provided the tenant with additional time to locate the 1 Month Notice, which she said she did not think she needed for this hearing. The landlord told the tenant that she could find a copy of the 1 Month Notice on his USB drive evidence that he provided to her, prior to this hearing.

The tenant provided a document which she named "doctor note," dated December 15, 2022. The document is titled "sick note" at the top of the 1-page document and does not indicate the name of the doctor on it. The tenant provided a copy of 1 page of text messages and 1 page of a service document, indicating that the landlord accepted her evidence, prior to this hearing. She did not reference or explain any of her documents during this hearing, except to indicate that she provided a doctor's note regarding her medical issues.

The tenant did not provide her own photographs or videos showing that she was in the process of cleaning the rental unit and removing items, as she claimed during this hearing. The tenant did not provide sufficient documentary or testimonial evidence to prove that she rectified the complaints made by the landlord on the 1 Month Notice, a previous 1 Month Notice from April 2022, or the landlord's multiple written notices and warnings regarding items to be removed and cleaned, which failure to do so would result in her eviction.

The tenant agreed that she had a lot of items all over the rental unit and it was hard to get in, as per the fire department report, regarding the rental unit. The tenant agreed that the fire department came to the rental unit, she initially refused access, the fireman came to her back door, and the fire chief returned later regarding the issue. The tenant agreed that she had not yet cleaned up or removed all of her items cluttered all over the rental unit, that she had boxes stacked that were too high for her to reach or to unpack, since moving from her previous residence in March 2022, and that she needed her brother's help to clear the rental unit because she could not do it by herself.

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.

Accordingly, I find that the landlord's 1 Month Notice, dated December 12, 2022, complies with section 52 of the *Act*. I issue an Order of Possession to the landlord, effective two (2) days after service on the tenant. The effective date on the 1 Month Notice of February 5, 2023, has long passed, as this hearing occurred on April 27, 2023.

At the beginning and end of this hearing, I repeatedly informed the tenant that I would issue a 2-day order of possession against her, if I ended her tenancy and upheld the landlord's 1 Month Notice. The tenant repeatedly affirmed that she was prepared for the above consequences if that was my decision. I repeatedly asked the tenant if she wanted to settle her application with the landlord and she repeatedly declined.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's 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. The tenant must be served with a copy of this Order. 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: April 27, 2023

Residential Tenancy Branch