



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTLEGAR VILLA SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC; CNC

Introduction

This hearing dealt with the tenant's first application, filed on January 31, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated January 24, 2023, and effective February 28, 2023 ("first 1 Month Notice"), pursuant to section 47.

This hearing also dealt with the tenant's second application, filed on April 11, 2023, pursuant to the *Act* for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated April 11, 2023, and effective May 11, 2023 ("second 1 Month Notice"), pursuant to section 47.

The landlord's three agents, "landlord KR," "landlord BT," and "landlord ND, the tenant, and the tenant's advocate 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 53 minutes from 11:00 a.m. to 11:53 a.m.

The landlord's two witnesses were present in the same room as the landlord's agents. They were excluded from the outset of this hearing and did not hear both parties testify. Both witnesses left the hearing at 11:03 a.m. "Witness AK" returned and testified from 11:39 to 11:45 a.m. "Witness SC" returned and testified from 11:46 to 11:52 a.m. Both witnesses left the hearing when their testimony was completed.

All hearing participants confirmed their names and spelling. Landlord KR provided her email address, and the tenant provided his mailing address for me to send copies of this decision to both parties after this hearing.

Landlord KR confirmed that the landlord company ("landlord") named in this application owns the rental unit. She provided the legal name of the landlord. She confirmed the rental unit address. She said that she is an operations manager, employed by the landlord. Landlord BT said that he is a board member for the landlord. Landlord ND said that she is in operations assistance for the landlord. The landlord's agents all affirmed that they had permission to represent the landlord at this hearing. Landlord KR identified herself as the primary speaker for the landlord at this hearing.

The tenant affirmed that his advocate had permission to represent him at this hearing. He identified his advocate as his primary speaker at 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. During 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. They had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

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

I repeatedly cautioned the tenant that if I dismissed his application without leave to reapply, I could uphold one or both of the landlord's 1 Month Notices, end this tenancy, and issue a two (2) day order of possession against him. He repeatedly affirmed that he was prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord's agents that if I cancelled one or both of the landlord's 1 Month Notices, I would not issue an order of possession to the landlord, and this tenancy would continue. Landlord KR repeatedly affirmed that the landlord was prepared for the above consequences if that was my decision.

Preliminary Issue – Service of Documents and Amendment

Landlord KR confirmed receipt of the tenant's two applications for dispute resolution hearing packages. The tenant's advocate 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 two applications and the tenant was duly served with the landlord's evidence.

Landlord KR stated that the tenant was served with the landlord's first 1 Month Notice on January 24, 2023, and the landlord's second 1 Month Notice on April 11, 2023, both by way of leaving copies in the tenant's mailbox. The tenant and the tenant's advocate confirmed receipt of both 1 Month Notices on the above dates by the above service methods. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's first 1 Month Notice on January 24, 2023 and the landlord's second 1 Month Notice on April 11, 2023.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's two applications to remove the name of landlord KR, who is not the owner of the rental unit, and replace it with the name of the landlord, who is the owner. Landlord KR consented to this amendment during this hearing. Neither the tenant, nor his advocate, objected to same, during this hearing. I find no prejudice to either party in making this amendment.

Issues to be Decided

Should the landlord's two 1 Month Notices be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and the landlord's two witnesses 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.

Landlord KR and the tenant agreed to the following facts. This tenancy began on November 1, 2020. Monthly rent in the current amount of \$672.00 is payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to occupy the rental unit.

First 1 Month Notice

Both parties agreed that the landlord issued the first 1 Month Notice, for the following reason indicated on page 2 of the notice, which was read aloud by landlord KR during this hearing:

- *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.*

Both parties agreed that the landlord indicated the following under the “details of cause” section on page 2 of the 1 Month Notice, which was read aloud by landlord KR during this hearing (landlord name redacted for confidentiality):

“On the weekend of January 13th tenant was smoking on [landlord] peoperty. This is in violation of [landlord] policy and rule #4 of addendum that tenant signed at start of tenancy.” [sic]

Landlord KR testified regarding the following facts. The landlord provided three evidence packages. In the first evidence package, the landlord provided the signed addendum by the tenant, which indicates that smoking is not allowed, there is zero tolerance, and a violation is cause for immediate eviction. The landlord also provided two letters from two witnesses who saw the tenant smoke on the property. On March 15, 2022, the tenant was given a notice reminding that no smoking was allowed. The tenant was also given notices on October 21, 2022 and December 6, 2022. The landlord provided photographs of the property and witnesses who saw the tenant smoke in the second evidence package.

The tenant’s advocate stated following facts. The tenant was not given any written or verbal warnings by the landlord, regarding smoking. The landlord went straight to eviction. The tenant does not smoke in his rental unit. The landlord’s witnesses saw the tenant smoking outside. There is nothing in the landlord’s signs on the doors that indicate why they have their own calculation of a 13-metre distance for smoking. This exceeds the provincial standards which is 3 meters. The tenant exits, goes to the street to smoke, and follows the rules. He smokes 14 meters away from the property, as per his own calculations.

Landlord KR stated the following facts in response. The landlord withdraws the information regarding the 13 meters, and this was a mistake in the landlord's evidence. The tenant was reminded about smoking. The landlord agrees that the 3-meter provincial standard is correct. There are "no smoking" signs all over the building. The tenant was seen smoking by the "no smoking signs" in pictures 2 and 4 of the landlord's evidence.

Second 1 Month Notice

Both parties agreed that the landlord issued the second 1 Month Notice, for the following reason indicated on page 2 of the notice (which was read aloud by landlord KR 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.*

Both parties agreed that the landlord indicated the following under the "details of cause" section on page 2 of the 1 Month Notice, which was read aloud by landlord KR during this hearing:

"The tenant has already been served a notice of eviction for smoking on property. After tenant received evidence package from landlord, notes and letters were left for the tenant rep and another tenant in our common room. Along with a copy of these notes is a statement from our tenant rep. These letters and notes are attached to this document. Also attached to this notice is a letter from the Board of Directors." [sic]

Landlord KR testified regarding the following facts. The landlord was approached by the tenant representative, witness SC. Witness SC received three notes, left in the common space, which she uses. One is an apology. Once the tenant found out that the landlord's two witnesses were testifying at this hearing, is when the notes appeared. The landlord compared the tenant's notices to the common room notes, and it is the same handwriting of the tenant.

The tenant's advocate stated following facts. There is no proof that the tenant wrote those notes that were left in the common room. The landlord did not hire any handwriting experts. This is a common space where anyone can leave notes. The notes did not threaten or cause any significant interference with anyone. The notes are

not “harassment.” In the tenant's evidence package, he provides the definition of harassment under the Criminal Code of Canada (“CCC”), which indicates that it has to be repeated harassment. That is not the case in this situation. There is no proof or pictures of the tenant smoking.

The landlord’s witness AK testified regarding the following facts. She lives in another unit, which is upstairs, around the corner, and not the same floor as the tenant, in the same building. She wrote a letter regarding the tenant. She saw the tenant smoke below the stairs. She signed her letter, dated January 20, 2023. She saw the tenant smoking at the bottom of the stairs when she walked by. She was asked to submit the letter by the landlord. She initially brought the concern to the board of directors, without being asked, and then they asked her to write a letter.

The landlord’s witness SC testified regarding the following facts. She is a tenant representative and was elected by other tenants in the building. It is a voluntary position. She reports complaints to the landlord’s board of directors. She lives in another unit in the same building as the tenant, on the floor above him. She wrote the letter to the board of directors, who asked her to put it in writing, because the tenant was being given an eviction notice by the landlord. She saw the tenant smoke below the stairs. There were things going on with other tenants at the time when the notices were left in the common room. She saw the tenant smoke at the staircase on the property, as per picture #3 of the landlord’s evidence. She provided a timeline regarding the notices in the common room. Her and her mother do puzzles in the common room. She thinks the notes are from the tenant, based on the way the notices were written. There was a fruit pie with a note. She has no proof that the notices were written by the tenant and left in the common room. She took the notes to the office and matched it up with the handwriting in other notices from the tenant.

Analysis

On a balance of probabilities and for the reasons stated below, I grant the tenant’s two applications to cancel the landlord’s two 1 Month Notices.

The landlord’s two 1 Month Notices, dated January 24, 2023, and April 11, 2023, are both cancelled and of no force or effect.

The landlord is not entitled to an order of possession against the tenant. This tenancy continues until it is ended in accordance with the *Act*.

Burden of Proof

According to subsection 47(4) of the *Act*, a tenant may dispute 1 Month Notices by making applications for dispute resolution within 10 days after the date the tenant received the notices.

The tenant received the first 1 Month Notice on January 24, 2023, and applied to dispute it on January 31, 2023. The tenant received the second 1 Month Notice on April 11, 2023, and applied to dispute it on April 19, 2023. Therefore, I find that the tenant is within the 10-day time limit to dispute both 1 Month Notices. Accordingly, the burden shifts to the landlord to prove the reasons on both 1 Month Notices. I informed both parties of the above information during this hearing and they affirmed their understanding of same.

The landlord confirmed receipt of the tenant's two applications, which includes a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"). The NODRP contains the phone number and access code to call into this hearing, and states the following at the top of page 2, in part (my emphasis added):

- ***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 following RTB *Rules* 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 53 minutes. The landlord attended this hearing with three landlord agents and two landlord witnesses. The landlord had ample time and multiple opportunities to present its submissions and evidence. During this hearing, I repeatedly asked the landlord's agents if they had any other submissions and evidence to present and to respond to the tenant's evidence.

The landlord's agents did not sufficiently present and review their documents submitted as evidence for this hearing. They mentioned the existence of documents but failed to explain them in sufficient detail during this hearing.

Landlord BT and landlord ND did not testify at this hearing, even though they were provided with the opportunity for same. Only landlord KR provided testimony.

I did not find the evidence of the landlord's two witnesses to be helpful. Landlord KR asked leading questions to witness AK, despite my repeated warnings not to do so.

First 1 Month Notice

I find that the landlord provided insufficient evidence to show that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

I find that the landlord failed to provide sufficient evidence of a pattern of behaviour by the tenant demonstrating *serious* jeopardy, as per the reason indicated on the first 1 Month Notice.

The landlord did not indicate the effect, if any, that the tenant's smoking had on the landlord or other occupants at the residential property. The landlord referenced the two witness letters, but did not provide sufficient details of same, such as the dates of the incidents, the effect on the people involved, or other such information.

Both witnesses testified that they saw the tenant smoke, but they did not indicate the effect, if any, that the smoking had on them or other occupants at the residential property. Witness SC said she was elected by the other tenants as a tenant representative, but she did not indicate the effect, if any, that the tenant's smoking had on her or other occupants at the residential property.

Both witnesses agreed that they were asked by the landlord to write letters about seeing the tenant smoke on the property. Both letters are dated January 20, 2023, and state the same information with different signatures (tenant's name redacted for confidentiality): "*I was asked by a board member if I had seen [tenant] smoking below the stairs – I answered yes.*" The letters do not state the date when they saw the tenant smoking, where the stairs are located in relation to the residential property, the effect, if any, that the smoking had on them or other occupants at the residential property, or other such information.

The tenant denied smoking on the residential property, claiming that he smokes away from the property, on the street, at least 3 metres, as per the provincial regulation. The landlord agreed that its calculation of a 13-metre requirement was not correct, and that the provincial amount was 3 metres. The landlord's three notices from March, October, and December 2022, all indicate that smoking is not permitted in any occupant units. Neither party provided evidence that the tenant was smoking inside his rental unit. The landlord's four photographs do not show the tenant smoking anywhere, whether on or off the residential property.

Accordingly, I grant the tenant's first application to cancel the landlord's first 1 Month Notice. The landlord's first 1 Month Notice, dated January 24, 2023, is cancelled and of no force or effect. The landlord is not entitled to an order of possession against the tenant. This tenancy continues until it is ended in accordance with the *Act*.

Second 1 Month Notice

I find that the landlord provided insufficient evidence to show that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find that the landlord failed to provide sufficient evidence of a pattern of behaviour by the tenant demonstrating *significant* interference or *unreasonable* disturbance, as per the reason indicated on the second 1 Month Notice.

Landlord BT claimed that he was on the board of directors, but he did not testify as to the letter issued by the board of directors, to the tenant, as referenced in the details of cause on page 2 of the second 1 Month Notice (noted above).

Landlord KR and the landlord's two witnesses agreed that they could not prove that the tenant wrote the notes that were left in the common room of the residential property. The landlord made an assumption based on its own comparison of the tenant's handwriting in other notices and the notes left in the common room. The landlord did not produce a handwriting expert, which was raised by the tenant's advocate, and was not responded to by the landlord's agents despite having the opportunity to reply to same, during this hearing.

The tenant denied writing the notes left in the common room of the residential property. He claimed that the notes did not meet the definition of harassment under the CCC. The landlord provided a letter, dated April 11, 2023, to the tenant, stating that he was being given the second 1 Month Notice based on "harassment."

I note that I do not have jurisdiction to determine criminal offences, such as harassment, under the CCC, as I only have jurisdiction to determine residential tenancy matters, pursuant to the *Act*. I also note that the landlord did not provide any Court documents, police reports, police statements, or police officers as witnesses to testify at this hearing, regarding any harassment or criminal offences committed by the tenant.

Accordingly, I grant the tenant's second application to cancel the landlord's second 1 Month Notice. The landlord's second 1 Month Notice, dated April 11, 2023, is cancelled and of no force or effect. The landlord is not entitled to an order of possession against the tenant. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenants' two applications are granted.

The landlord is not entitled to an order of possession against the tenant.

The landlord's two 1 Month Notices, dated January 24, 2023, and April 11, 2023, are both cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: May 26, 2023

Residential Tenancy Branch