



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC-MT, OLC, FFT

Introduction

A hearing was convened on January 17, 2023 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, for more time to file an application to cancel a One Month Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The hearing on January 17, 2023 was adjourned to allow the Landlord to re-serve video evidence. The hearing was reconvened on May 26, 2023 and was concluded on that date.

The Tenant stated that on September 15, 2022 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

The Tenant stated that on September 15, 2022 the evidence he submitted to the Residential Tenancy Branch on August 29, 2022 was sent to the Landlord, via registered mail. The Agent for the Landlord stated that this evidence was not received by the Landlord, although the Landlord is in possession of some of the documents submitted. In my interim decision I ordered the Tenant to re-serve this evidence to the Landlord.

The Tenant stated that the aforementioned evidence was re-served to the Landlord on March 14, 2023. The Agent for the Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On December 22, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on December 22, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 06, 2023 the Landlord submitted a video recording to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on December 22, 2022. The Tenant stated that this evidence was not received with the other evidence received on December 22, 2022. In my interim decision I ordered the Landlord to re-serve evidence to the Tenant.

The Agent for the Landlord stated that the video evidence was re-served to the Tenant, via email, on January 18, 2023. The Tenant stated that it was received on March 13, 2023. As the Tenant acknowledges receipt of the evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a One Month Notice to End Tenancy for Cause and, if so, should the Notice be set aside?

Is there a need to issue an Order requiring the Landlord to comply with the Act or tenancy agreement?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on September 01, 2019;
- rent is due, in advance, by the last day of each month;
- his current monthly rent is \$695.00;
- the Tenant rents a private room and shares common areas with a person who also rents a private room under a separate tenancy;
- a One Month Notice to End Tenancy for Cause was sent to the Tenant, by email, on July 10, 2022;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by August 31, 2022; and
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and the tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Tenant stated that he has never given the Landlord authority to serve documents to him by email. The Landlord does not refute this submission.

The Tenant stated that he did not locate the One Month Notice to End Tenancy for Cause in his email until August 25, 2022.

The Agent for the Landlord stated that the male who was renting the other room and was sharing the common areas with the Tenant, whom I will refer to as "BD", moved out of the rental unit approximately 3 months ago. The Tenant stated that he thinks "BD" is

still living in the rental unit as “BD” continues to pick up his mail and water his plants, although he has not seen him at the unit.

The Agent for the Landlord and the Tenant agree that “BD” rarely stayed in the unit. The Agent for the Landlord stated that this was, in part, because of his employment and, in part, because of the condition of the common areas. The Agent for the Landlord stated that “BD” told the Landlord that he could not stay in the unit because of the condition of the common areas but “BD” was not willing to provide evidence for these proceedings.

The Agent for the Landlord stated that the Landlord wishes to end this tenancy because the Tenant has not maintained the common areas of the rental unit in reasonably clean condition. In support of this claim the Agent for the Landlord stated that “BD” has told the Landlord on several occasions that the common areas are not clean and the Landlord has repeatedly expressed that concern to the Tenant.

The Agent for the Landlord stated that the Landlord spoke with the Tenant approximately 7 times in 2021 about the cleanliness of the unit. He stated the does not know how many times this occurred in 2020.

The Tenant stated that the Landlord spoke with him about the cleanliness of the unit a “few” times in 2021 and a “few” times in 2020.

There is a text from “BD” to the Tenant on page 36 of the Landlord’s evidence, in which “BD” references the need to keep the “place” clean. The Tenant acknowledged receiving this text message from “BD” in January of 2020.

At page 21 of the Landlord’s evidence there are photographs of a messy kitchen. The Agent for the Landlord contends these photographs were sent to the Landlord by “BD” and are evidence of “BD”’s concerns about the cleanliness of the unit. The Tenant stated that he believes those photographs were taken in January of 2020, that he left the dishes because he was rushing off to work, and that they were cleaned later that day.

At page 23 of the Landlord’s evidence there are photographs of an unclean toilet. The Landlord and the Tenant agree that the Landlord cleaned the bathroom and kitchen on April 06, 2020, which was not a service provided with the tenancy. The contends these photographs were sent to the Landlord by “BD” and are evidence of “BD”’s

concerns about the cleanliness of the unit. The Tenant acknowledged that he had left the common area in a mess on that because he was rushing off to work.

At page 24 of the Landlord's evidence there are photographs of the unit taken on November 17, 2020 and February 05, 2021. The Tenant acknowledged that these were fair representations of the condition of the unit on those dates.

At page 25 of the Landlord's evidence there is a photograph of an overflowing garbage can which was taken on August 01, 2021. The Tenant acknowledged that he left that amount of garbage in the unit because he had to rush off to work, but that he removed the garbage later that same day.

The Tenant stated that the video evidence is a fair representation of how he has maintained the common shared kitchen. He stated that he believes the video was taken by "BD" in the latter part of 2021. He stated that he cleaned the common areas after the video was taken.

The Agent for the Landlord stated that the Landlord has not re-rented the other bedroom in the complex because the Landlord is awaiting the results of these proceedings. He stated that it would be impossible to have another person sharing the space with the Tenant, given the manner in which the Tenant maintains the common areas.

The Tenant is seeking an Order requiring the Landlord to give proper notice if the Landlord wishes to enter the rental unit for any reason and an Order directing the Landlord to refrain from discarding the Tenant's personal items and food.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement which requires rent to be paid, in advance, by the last day of each month.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

a) the tenant does not pay the security deposit or pet damage deposit within 30 days of

the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

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

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(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;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

(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;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that the Landlord sent the Tenant a One

Month Notice to End Tenancy for Cause, via email, on July 10, 2022.

Section 88(j) of the *Act* permits a landlord to serve a notice to end tenancy “by any other means of service provided for in the regulations”.

Section 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 88(j) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

As the evidence shows that the Landlord did not have authority to serve documents to the Tenant by email, I find that the One Month Notice to End Tenancy for Cause was not served to the Tenant in accordance with section 88(j) of the *Act*.

On the basis of the testimony of the Tenant, I find that the Tenant received the One Month Notice to End Tenancy for Cause, via email, on August 25, 2022. I therefore find that this Notice was sufficiently served to the Tenant on August 25, 2022, pursuant to section 71(2)(b) of the *Act*.

I find that the One Month Notice to End Tenancy for Cause properly informed the Tenant of the Landlord’s intention to end the tenancy pursuant to sections 47(1)(d) and 47(1)(h) of the *Act*.

Section 47(5) of the *Act* grants a tenant the right to dispute a One Month Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. As I have concluded that the Tenant received the One Month Notice to End Tenancy for Cause on August 25, 2022, the Tenant had until September 04, 2022 to file this Application for Dispute Resolution.

Residential Tenancy Branch records show the Tenant filed this Application for Dispute Resolution on August 29, 2022. As the Tenant filed the Application for Dispute Resolution within 10 days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Tenant complied with the timeline established by section 47(5) of the *Act*. As such, I find I do not need to consider the application for more time to apply to cancel the One Month Notice to End Tenancy for Cause.

After considering all of the evidence that has been summarized in the background portion of this decision, I find that the Tenant has frequently maintained the common

kitchen area in an unacceptable manner. I find that the Tenant has been clearly advised, by both the Landlord and the person sharing the common areas with him, that the condition of the common areas is unacceptable. In spite of those communications, the Tenant has continued to leave the common area in a wholly unacceptable condition, which is evidenced by the video the Tenant believes was taken in the latter part of 2021.

On the basis of the video and photographic evidence, I find that the Tenant has maintained the common areas in a manner that would disturb the majority of people who would share common areas with him. I find this has disturbed the occupant that was sharing the common areas with the Tenant and it will make it extremely difficult for the Landlord to find another person to share the common areas with the Tenant. I therefore find that the Landlord has established grounds to end this tenancy, pursuant to section 47(1)(d)(i) of the *Act*.

As the Landlord has established grounds to end this tenancy, I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy for Cause.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the application to set aside the One Month Notice to End Tenancy for Cause. I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I hereby order the Landlord to comply with section 29 of the *Act* whenever the Landlord or an agent for the Landlord enters the unit. As this tenancy is ending in a few days, I do not find it necessary to issue any other Orders to the Landlord.

I find that the Tenant has failed to establish the merit of this Application for Dispute Resolution and I dismiss the application to recover the for filing the Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective on **at 1:00 p.m. on May 31,**

2023. This Order may be served on the Tenant, filed with 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 *Act*.

Dated: May 26, 2023

Residential Tenancy Branch