



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on September 30, 2022, in which the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on September 26, 2022 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference on November 29, 2022, and April 6, 2023. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of this Application concluded on April 6, 2023. This Decision was rendered on May 10, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord, M.L. testified that the tenancy began November 1, 2016. Rent is currently \$1,719.00 per month. The tenant also paid a \$775.00 security deposit.

The Landlord issued the Notice on September 26, 2022. The Notice was served by posting it to the rental unit door and placing in the mailbox on September 26, 2022. The Notice indicated the reasons for ending the tenancy as follows:

- The Tenant is repeatedly late paying rent;
- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;

- the Tenant has caused extraordinary damage to a rental unit or residential property;
- the Tenant has not done required repairs of damage to the unit/site;

The Notice included an attachment which M.L. confirmed was served with the Notice. This document provided additional details as follows:

- Details regarding flooding at the rental unit in November 2021 due to a toilet overflow. The Landlord writes that the Tenant did not contact the Landlords regarding this such that the Landlord was not able to minimize their loss. The Landlords further noted that they were charged \$4,195.11 as a result of the flooding and did not receive reimbursement from the Tenant despite their requests.
- Details relating the Tenant's failure to allow the strata to perform necessary duct cleaning in March of 2022 which resulted in the Landlords incurring the cost to have the duct cleaning rescheduled.
- Details regarding the August 14, 2022 incident in which the rental unit was again subject to flooding as a result of the Tenant improperly installing a water filtration system (such installation done without the Landlords' consent). The Landlords allege the Tenant again did not contact them regarding this leak. Again, the Tenant did not reimburse the Landlords for the expenses they incurred dealing advised the flooding.
- The Landlords allegation that the Tenant operates a business from the rental unit and has done so without the Landlords' consent.
- Details regarding the following alterations and modifications to the rental unit made by the Tenant without verbal or written consent of the Landlords, which has caused damage to the rental unit; including:

Lower-Level Front Hallway Closet

- Removed the two lower-level front closet wood bifold doors.
- Removed all lower-level front closet hardware.
- Installed closet organizers to the lower-level front hallway closet.

Lower-Level Storage Closet

- Removed the lower-level storage closet wood bifold door.
- Installed a fabric curtain and metal rod.

Lower-Level Bathroom

- Removed the lower-level chrome bathroom articulating mirror.
- Replaced the lower-level chrome articulating mirror with an inferior standard mirror.

Kitchen Faucet

- Chrome Kitchen faucet button is broken and has not been repaired or replaced.

Lower-Level Walls

- Caused damage beyond normal wear and tear to the lower-level walls.

Lower-Level Floors

- Caused damage beyond normal wear and tear to the lower-level wood flooring.

Stairs

- Caused damage beyond normal wear and tear to the lower level to upper-level stairs.

Stair Walls

- Caused damage beyond normal wear and tear to the stair walls.

Upper-Level Bedroom Walk in Closet

- Removed the upper-level bedroom walk in closet wood bifold door.
- Removed all upper-level bedroom walk in closet hardware.
- Installed closet organizers to upper-level bedroom walk in closet.

Upper Level

- Ran cables from upper to lower level and stapled the same to the walls.

Upper-Level Walls

- Caused damage beyond normal wear and tear to the upper-level walls.

- The Landlords allegation that the Tenant fails to keep the rental unit clean.

- Details regarding the Tenant's repeated late paying rent; including: 4 late payments in 2017 and 2018, 3 late payments in 2019, 2020 and 3 late payments in 2021.

At the hearing before me the Landlord M.L. testified that the Tenant was late paying his rent in November of 2022.

The Landlord also provided additional testimony regarding the flooding at the rental unit and their concerns that the Tenant failed to inform them in a timely manner such that their property was put at significant risk.

The Landlords also noted that despite clause 24 of the tenancy agreement requiring the Tenant to obtain tenants insurance the Tenant has either not had insurance, had inadequate or inappropriate insurance, or has failed to apply for reimbursement to cover the Landlords' expenses.

In response to the Landlord's submissions, the Tenant stated that on November 17, 2022, a friend of his used the toilet and it overflowed. The Tenant stated that he was not aware of this until the building manager informed him and he contacted his friend who admitted that she had overflowed the toilet.

In response to the Landlords' claim that the Tenant failed to inform them of the water damage in November of 2022, the Tenant stated that the water was cleaned up right away and there was no indication that it was more extensive. He was unaware at the time that there was damage to other suites.

The Tenant stated that he did contact his insurer after he was informed that the Landlord was charged by the strata. The Tenant stated that his insurer told him that they would not provide coverage as this was a problem with the toilet, and not a result of negligence as they did not put anything in the toilet.

In response to the Landlords' claim that the Tenant also failed to inform them of the water damage in August of 2022, the Tenant stated that the Landlord was informed by the building manager within an hour and were present at the rental unit within a couple hours. At that time the building manager had already phoned them the Tenants were cleaning up the mess and the Tenant felt they were sufficiently informed. The restoration company also attended.

In terms of the August 2022 flood, the Tenant stated that the Landlords were reimbursed by his insurer. The Tenant stated that he opened an insurance claim August 22, 2022 and was not responsible for the delay in the Landlords being reimbursed.

In terms of the late rent payments the Tenant stated that he was never informed that his tenancy was in jeopardy for repeated late payment of rent. He stated that it was never an issue until it was brought up on the Notice.

In terms of the late municipal utility payments the Tenant confirmed that he does not have an excuse for paying utilities late. The Tenant stated that until he received the Notice he thought they had a great relationship. He said he wasn't taking advantage of the situation, but they were cordial, and he agrees he wasn't as diligent as he could be to treat this as a business relationship.

In reply the Landlord confirmed that she had made an application for monetary compensation from the Tenant in relation to the expenses incurred as a result of the November 2021 flooding and that a hearing of that matter was scheduled for October 2023 before the Residential Tenancy Branch.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Act*. In this case the Landlord seeks to end the tenancy for cause and for the following reasons:

- The Tenant is repeatedly late paying rent;
- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has caused extraordinary damage to a rental unit or residential property;

- the Tenant has not done required repairs of damage to the unit/site;

To end a tenancy for repeated late payment of rent a landlord must not only prove a tenant has been repeatedly late, but that they also were informed that their tenancy was in jeopardy and continued to pay their rent late. In this case, while the Tenant did pay his rent and utilities late a number of times over the course of several years, there was no evidence before me that the Landlords informed the Tenant that his tenancy was in jeopardy due to the late payment of rent, or municipal utilities. In this respect I find the Landlords were complicit in the Tenant's late payment and gave him no indication they expected strict compliance with the tenancy agreement in terms of payment. While they have certainly conveyed their expectations now as a result of issuing the Notice, I am not satisfied they were clear with the Tenant over the course of the four years in which he has been a Tenant. As such, I am not persuaded the tenancy should end for this reason. The Tenant is cautioned that any continued late payment may result in an end to his tenancy.

The use of the words *extraordinary damage*, *significant interference*, *seriously jeopardized* and *significant risk* signify the seriousness of the events giving cause to end a tenancy under section 47. Tenancies should not end for minor infractions of a tenancy agreement.

The Landlords also allege the Tenant caused flooding to the rental unit on two separate occasions, did not inform the Landlord in a timely manner, and failed to reimburse the Landlords for the expenses they incurred. In this respect they allege the Tenant has put their property at significant risk.

In terms of the November 2021 flooding, I am not persuaded by the evidence before me that the Tenant or his guests caused the toilet to overflow. It may be, as the Tenant suggests, a fault with the toilet or plumbing. This matter will be before the Branch in October of 2023 at which time the presiding Arbitrator will decide whether the Tenant is responsible for the costs incurred by the Landlord.

In any event, I find the Tenant was not aware of the flooding until he was informed by the building manager as a guest of his caused the toilet to overflow. It appears as though the matter was dealt with expeditiously and that the Landlords were informed soon after the incident. Further, the Tenant attempted to obtain reimbursement from his insurer for the Landlord and was denied coverage as the insurer also was not satisfied it was a result of the Tenant's actions or negligence. I find the Tenant dealt with this

incident appropriately and did not put the Landlords' property at significant risk; as such I am not persuaded the tenancy should end for this incident.

Similarly, I am not persuaded the tenancy should end for the second flooding event in August of 2022. While it appears as though the water damage was a result of the Tenant's installation of the water filtration system, this, I am satisfied the Landlords were informed of the water as soon as it became known to the Tenant, and they were able to remedy the situation quickly. I am also satisfied the Landlords were reimbursed for any remediation and repair expenses.

The Landlords also allege the Tenant has caused extraordinary damage to the rental unit; in this respect they point to various alterations to closet shelving and doors, scratches to flooring and walls and a general lack of cleanliness. The Tenant submitted numerous photos of the rental unit which show the unit clean and undamaged.

I am not persuaded that any of the items listed by the Landlord constitute *extraordinary* damage. Tenants will often make minor changes to rental units to make the space feel more like their home. And while it is the case that a tenant should obtain a landlords' consent prior to making any changes to a rental unit, tenants often make minor improvements to rental units particularly in long tenancies. It is also possible the Tenant has improved the functionality of the closets such that the Landlords may wish to retain the shelving placement or additions to the closets. Should the Landlords want the closet shelving and doors returned to their original condition, they may make a formal request of the Tenant prior to his tenancy ending.

Similarly, while the Landlords may feel the Tenant is not keeping the rental unit as clean as they would like, unless the manner in which the unit is being kept becomes so problematic as to constitute a health or safety issue, this is not a reason to end a tenancy.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As noted above, the Tenant must ensure the rental unit is clean and undamaged when the tenancy *ends*. However, during a tenancy, a tenant is entitled to exclusive possession of the rental unit and quiet enjoyment. As such, he has until his tenancy ends to return the property to its original condition and to ensure it is clean. The Tenant is cautioned however that any alterations to the rental unit should be consented to by the Landlords and that he may be expected to return the unit to its original condition, at his expense, prior to the end of the tenancy.

I was not provided extensive submissions on the Landlords allegation that the Tenant was operating a business from the rental unit, nor how any such business might put the rental property at risk.

Similarly, the Landlords did not provide any submissions regarding the Tenant's failure to permit duct cleaning at the scheduled time. The Landlords are at liberty to seek compensation from the Tenant for any additional charges they incurred as a result of the Tenant not being available at the scheduled time.

For these reasons I find the Landlords have failed to prove this tenancy should end for the reasons set forth in the Notice. The tenancy shall continue until ended in accordance with the *Act*.

As the Tenant has been successful in his application, he is entitled to recover the \$100.00 filing fee. This this end, and pursuant to section 72 of the *Act*, I authorize the Tenant to reduce his next months' rent by \$100.00.

Conclusion

The Tenant's Application for an order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's request for recovery of the filing fee is granted.

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 10, 2023

Residential Tenancy Branch