



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **CNC, FFT**

Landlord: **OPC, FFL**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Landlord's cross application pursuant to the Act for:

1. An Order of Possession for a One Month Notice pursuant to Section 55 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by attaching a copy to the Tenant's door on January 16, 2023, the Landlord's Agent provided a witnessed proof of service, deemed served on January 19, 2023;
- the Tenant's Notice of Dispute Resolution Proceeding package issued by the RTB on December 6, 2022 served by registered mail, the Landlord's Agent confirmed receipt, deemed served on December 11, 2022; and,
- the Landlord's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on March 14, 2023, the Tenant confirmed receipt, deemed served on March 19, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on May 11, 2011. The fixed term ended on April 30, 2012, then the tenancy continued on a month-to-month basis. Monthly rent is \$982.00 payable on the first day of each month. A security deposit of \$425.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant or a person permitted on the 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; and the Tenant or a person permitted on the property by the Tenant has

caused extraordinary damage to the unit or property. The effective date of the One Month Notice was February 28, 2023.

The Landlord provided further details of the causes to end this tenancy as:

After multiple complaints from neighbours and other tenants, [the Tenant] was served with a Caution Notice on April 1st 2022 for yelling obscenities from the open window of his suite whilst inebriated, thereby disturbing the peace of the tenants in the building and neighbouring properties. This happened on multiple occasions. He modified his behaviour for a while, after receiving the Notice, but the same behaviours began again and, in the early hours of Saturday November 26th 2022 after once again drunkenly yelling from his window, he passed out and left a faucet running [sic], causing the basin in the bathroom to overflow. The water activated the fire alarm, so the tenants called Oak Bay Fire Department and the building was evacuated at approx. 1:45am. The Fire Department had trouble waking him to gain access to the suite to turn off the water. Water damage was incurred by the two suites below, saturating the carpets and ceiling, and destroying a heat detector. The tenant has shown no remorse and does not seem to take this even seriously, merely replying to my email with: 'We can't all be perfect'.

The Landlord testified that the Tenant is abusive and has disturbed other tenants. On March 5, 2022, a caution notice was sent to the Tenant for disturbing the quiet enjoyment of other tenants, and that he was smoking in the non-smoking building. The Landlord provided two emails from other tenants dated April 1, 2022 and December 28, 2022 about their quiet enjoyment being disrupted by the Tenant's anti-social behaviour. One tenant told the Landlord, late at night when the Tenant is being noisy, he puts on headphones and turns up the music.

The Tenant testified that the Landlord sent him an email on the day after he left the water running in his rental unit that he would have to leave. The Tenant applied for dispute resolution. Later the Tenant received the proper notice posted on his door.

The Landlord claimed that after the fire department left the building, they received a fire report. They received an invoice for the water damage inspection, and the Tenant paid the invoice, and paid to repair the damages. The Landlord said there were about four invoices, she would email them to the Tenant, and he would pay them. He did not haggle about them. The fire alarm system could not be turned off, and the alarm had to

be reset the next day. The Landlord had to get someone out to patrol the building which the Tenant paid for.

The Landlord stated there are single women in the building who did not want to put anything in writing to the Landlord because they are frightened of him. The Landlord said the Tenant is a decent person when he is not under the influence of alcohol.

The Tenant testified that he has lived in the building for 12 years. He expressed his apologies in the hearing about the event where he left the water faucet running, he stated that he should have said sorry earlier. The Tenant says he knows he has been loud in the past. The Tenant's father died recently, and his mother was diagnosed with ovarian cancer, but he is getting help and he is trying not to drink.

The Landlord is not prepared to withdraw their One Month Notice. They provided a caution a year ago but feel he will just do it again. The Landlord is seeking an Order of Possession.

The Tenant says if the One Month Notice is cancelled, he will give up drinking.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act outlines how a tenancy can end for cause:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(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;*
- ...
- (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;*
- ...
- (2) *A notice under this section must end the tenancy effective on a date that is*
 - (a) *not earlier than one month after the date the notice is received, and*
 - (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
- ...

The Landlord's One Month Notice was deemed served on January 19, 2023. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution after receiving the Landlord's email notice at the end of November 2022 that they would be ending his tenancy. The Tenant did not believe that the Landlord had served the proper notice, but he decided to dispute it just in case. The Tenant did confirm receipt of the Landlord's proper One Month Notice served in January 2023.

The Landlord testified that the Tenant has been aggressive to other tenants, and disruptive of other tenants' quiet enjoyment. This anti-social behaviour occurs when the Tenant is under the influence of alcohol. The Landlord uploaded email documentary evidence supporting their claims about the Tenant's significant interference of other occupants and the Landlord of the residential property.

On November 26, 2022, the Tenant passed out after turning on his bathtub faucet. The tub overflowed and water impacted the suite below him and more seriously impacted the suite on the bottom floor. Because of the water flowing down into the below suites, the heat detectors were activated, and the fire department was called. The fire department had difficulty accessing the Tenant's suite, but once inside the water was turned off. The Landlord submits that significant water damage was done especially to the lower unit, and the Landlord would forward invoices to the Tenant so that he would pay to repair the damage caused by his tub overflowing.

The disruptive behaviour of the Tenant has gone on for over a year. The water incident occurred because the Tenant was not aware that he had left the water on in the bathroom which overflowed into the below two rental units. The disruptive behaviour and the water incident occurred while the Tenant was under the influence of alcohol. The Landlord is not confident that the Tenant will be able to conduct himself accordingly in the future and is seeking an Order of Possession. I find the Landlord has proven on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed other occupants and the Landlord of the residential property, and consequently I dismiss the Tenant's application to cancel the One Month Notice without leave to re-apply.

As the Tenant was not successful in his application, I must now consider if the Landlord is entitled to an Order of Possession.

Order of possession for the landlord

- 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.*

I find that the One Month Notice complies with Section 52 of the Act, and I uphold the Landlord's One Month Notice. I grant an Order of Possession to the Landlord pursuant to Section 55(1) of the Act which will be effective on May 31, 2023 at 1:00 p.m.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

As the Tenant was not successful in his claim, I do not grant him recovery of the application filing fee.

Conclusion

The Tenant's application is dismissed.

The Landlord's One Month Notice is upheld, and I grant an Order of Possession to the Landlord effective on May 31, 2023 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as possible. 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 Act.

Dated: May 11, 2023

Residential Tenancy Branch