



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: CNC, MNDCT, RR, RP, PSF, OLC, FFT
Landlord: OPC, MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of a One Month Notice to End Tenancy for Cause dated January 10, 2023 (the "One Month Notice") pursuant to section 47 of the Act;
- compensation of \$5,600.00 for monetary loss or money owed by the Landlord pursuant to section 67 of the Act;
- a rent reduction of \$2,800.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the Act;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32 of the Act;
- an order that the Landlord provide services or facilities required by law pursuant to section 27 of the Act;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62 of the Act; and
- authorization to recover the filing fee for the Tenant's application from the Landlord pursuant to section 72.

The Landlord applied for:

- an Order of Possession under the One Month Notice pursuant to section 55 of the Act;
- compensation of \$1,088.15 to repair the damage that the Tenant, their pets or their guests caused during the tenancy pursuant to section 67 of the Act;

- compensation of \$7,680.00 for unpaid rent or utilities pursuant to section 67 of the Act;
- authorization to the Tenant's security and/or pet damage deposit pursuant to section 72(2)(b) of the Act; and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72.

The Tenant attended this hearing and gave affirmed testimony. The Landlord's counsel MP attended as the Landlord's agent and made submissions on behalf of the Landlord.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Severing Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis underlined)

The Tenant has applied to cancel a notice to end tenancy and the Landlord is seeking an order of possession. Both parties have included other claims in their applications. Aside from their claims to recover the filing fee, I find the other claims in the parties' applications to be unrelated to the issue of whether the tenancy is ending under the One Month Notice. Pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss those unrelated claims with leave to re-apply.

Preliminary Matter – Service of Dispute Resolution Documents

MP confirmed receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence on behalf of the Landlord.

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package and documentary evidence. The Tenant stated that he received the Landlord's evidence eight days prior to the hearing, which the Tenant argued was contrary to the rules. The Tenant sought to have this evidence excluded or to have this hearing adjourned.

MP submitted that the Landlord's evidence is responding evidence to the Tenant's claim to dispute the One Month Notice. MP submitted that the Landlord's evidence was served ten days before the hearing, and in any event, more than seven days before the hearing. MP opposed an adjournment.

According to Rule 3.15 of the Rules of Procedure, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find the Landlord's evidence was served on time. Therefore, I do not exclude this evidence from consideration, nor do I find an adjournment of this hearing to be appropriate or necessary. I directed the hearing to proceed.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Are the parties entitled to reimbursement of their filing fees?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

The rental unit is the upper suite of a house. The Landlord resides in the lower suite. This tenancy commenced on May 1, 2022 for a fixed term ending on April 30, 2023, and was to continue thereafter on a month-to-month basis. Rent is \$2,800.00 due on the first

day of each month. The Tenant paid a security deposit and pet damage deposit of \$1,400.00 each.

Copies of the One Month Notice have been submitted into evidence. It signed by the Landlord and the effective date was February 28, 2023. The reasons for this notice are:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site/property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The One Month Notice contains the following details of cause:

1. Tenant held back \$1000 out of November, 2022 rent and only paid after advised by rental board to pay. He paid \$300 a day late in December, 2022. Tenant is not paying his 50% share of utilities for past several months even after repeated requests from the Landlord. Current outstanding utilities owed by Tenant to the Landlord are \$711.62 as of January 5, 2023.
2. The Tenant was told not to do any electrical work which he acknowledged in his email dated May 20, 2022 but made the alterations without permission putting the property at a continued risk of fire.

3. In breach of the terms of Residential Tenancy Agreement the Tenant is vaping and/or smoking cannabis in the rental unit/site (Item #10 of Addendum to Agreement).
4. The Tenant was expressly told not to pressure wash the house but he pressure washed the upper balcony and stucco.
5. The Tenant tore/damaged the carpet flooring within the rental unit without permission. The Tenant has damaged the flooring outside the entrance of the rental unit. The Tenant has damaged/tore out the garden outside the rental unit. The Tenant has not repaired the damage to the carpet flooring, tile flooring or the garden.
6. The tenant is using threatening language in his emails and other communications.

The Tenant acknowledged receipt of a copy of the One Month Notice in person on January 13, 2023.

According to the Landlord's written statement dated April 26, 2023 (the "Landlord's Statement"), the Tenant was late with payment of rent as follows:

- \$800.00 short for rent due on October 1, 2022, paid by October 4, 2022
- \$1,000.00 short for rent due on November 1, 2022, paid by November 3, 2022
- \$300.00 short for rent due on December 1, 2022, paid by December 2, 2022

The Landlord submits that the Tenant has not paid his share of the utilities for months. Section 6 of the tenancy agreement addendum states that the Tenant will pay 50% of gas and electric bills within 15 days of receipt of invoice.

The Landlord submits that the Tenant has put the property at significant risk by tampering with electrical wiring in the house, which includes aluminum wiring. The Landlord argues that RB, the person hired by the Tenant to do electrical work, has not provided evidence of certification, and did not hold an FSR (Field Safety Representative) designation. The Landlord argues that RB was not qualified to pull an electrical permit as the Landlord had expressly forbidden electrical work. The Landlord submits that the Tenant himself also has tampered with the electrical by changing out lights.

The Landlord submitted a statement from DM, president of an electrical contracting company. According to DM's statement, DM accompanied the Landlord for an inspection of the rental unit on September 6, 2022. DM states the Tenant had replaced

fixtures in various rooms and there was a missing fixture in the master bedroom. DM states that disturbing aluminum wiring can create a fire hazard. According to DM, this is “typically not an immediate hazard but over time, improper connections can create heat and ultimately fire”.

The Landlord submits that the Tenant regularly smokes cannabis in the rental unit, while section 10 of the tenancy agreement addendum prohibits smoking or vaping in the house or on the property. The Landlord submits that the Tenant smokes in the kitchen area where there is no smoke detector. The Landlord denies the Tenant’s suggestion that he was using a diffuser. The Landlord submitted statements from guests in her home who have noticed the smell.

The Landlord submits that on August 23, 2022, the Tenant trespassed to the Landlord’s side of the yard to get a hose, and pressure washed the upper balcony, creating a mess on the Landlord’s lower balcony.

The Landlord submits that the Tenant damaged the property by tearing out carpet near the stairway and the garden beds at the front door. The Landlord submits that tiles near the garden beds were also damaged. The Landlord provided a witness statement from previous tenants, photos, and repair estimates in support. According to the Landlord’s Statement, she saw the carpet damage during a monthly inspection in September 2022. The Landlord submits that peel and stick vinyl tiles that the Tenant had wanted to put in were not an acceptable replacement for properly installed carpet.

The Landlord submits that the Tenant has used threatening language towards her, including in the parties’ email correspondence.

The Tenant gave the Landlord a written notice to vacate the rental unit dated April 30, 2023, effective May 31, 2023. However, the Landlord seeks an order of possession as soon as possible. The Landlord submits that the Tenant paid only \$1,400.00 for April 2023 rent and did not pay any rent for May 2023.

In response, the Tenant submitted that he had hired a professional certified electrician to do any and all electrical work in the rental unit. According to the Tenant, the light fixtures were stained with cigarette smoke and he had them replaced. The Tenant submitted a statement dated April 11, 2023 from RB, which indicates that RB had replaced five light fixtures at the rental unit. RB states that he is a certified electrician.

According to this statement, the fixtures replaced were decades old, a fire hazard, and very dirty. The Tenant denied that there was any fire hazard.

The Tenant stated that the carpet over the small area near the stairs was urine-stained and smelling up the house, so he had it removed. The Tenant stated that he was contemplating putting down stick tiles over the area.

The Tenant stated that he uses a diffuser with a similar smell to cannabis. The Tenant denied that he smoked cannabis. The Tenant argued that the Landlord's witness statements were all made by relatives and co-workers, and were not notarized.

According to the Tenant, he stopped paying the utilities because the Landlord had many guests living with her from July to December 2022. The Tenant argued that the Landlord cannot move so many people downstairs and expect him to pay for their utilities. The Tenant stated that he should pay 25% instead of 50% for the time period that additional people were living in the house.

The Tenant acknowledged that he only paid \$1,400.00 for April 2023 rent and had deducted his pet damage deposit due to no longer having a pet.

The Tenant indicated that he deducted the security deposit of \$1,400.00 as well as paint and material costs from May 2023 rent, and included a reduced amount for the utilities owed. The Tenant explained that the Landlord had agreed to pay for paint and material costs and he was to provide free labour for painting the rental unit, which he has done. The Tenant provided a notarized statement from a witness, BT, who heard the Landlord say that she would pay for paint and materials. The Landlord did not cash the cheque provided by the Tenant for the balance of May 2023 rent (\$1,144.49).

The Tenant submitted an appendix with photos of the rental unit into evidence.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (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.

I have reviewed the One Month Notice and find that it complies with the requirements of sections 47 and 52 of the Act.

I find the Tenant was served with the One Month Notice on January 13, 2023 in accordance with section 88(a) of the Act. Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records indicate that the Tenant submitted this application on January 17, 2023. I find the Tenant made this application within the required time limit.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The reasons provided in the One Month Notice for ending the tenancy correspond to circumstances described in sections 47(1)(b) and (d) to (h) of the Act.

For the reasons that follow, I am satisfied on a balance of probabilities that the Landlord has demonstrated cause under section 47(1)(b) for repeatedly late payment of rent and section 47(1)(g) for failure to repair damage to the rental unit within a reasonable time. As such, I do not find it is necessary to discuss all of the reasons for ending the tenancy stated in the One Month Notice.

According to Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent, a minimum of three late payments are needed to justify a notice to end tenancy for repeatedly late payment of rent. The Landlord's evidence is that the Tenant was late with paying rent each month from October to December 2022. I find the Tenant did not contradict any of the payment dates given by the Landlord or provide any explanations as to why the rent may have been inadvertently late. I find the Tenant has acknowledged intentionally withholding amounts from rent due to various complaints against the Landlord, which caused the rent to be late in November 2022.

I note that under section 26(1) of the Act, a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to do so. I do not find the evidence to show that the Tenant had a right under the Act to withhold rent payable to the Landlord. I further note that under section 21 of the Act, a tenant must not apply a security deposit or a pet damage deposit as rent unless the landlord gives written consent.

Based on email correspondence submitted into evidence by the Landlord, I find the Tenant acknowledged receiving advice from the Residential Tenancy Branch to not withhold the rent. However, I find it is undisputed that the Tenant has continued to do so, such as by not paying rent in full for April and May 2023.

Under these circumstances, I find on a balance of probabilities that the Tenant was late with paying rent in full from October to December 2022 as claimed by the Landlord. I conclude that the Tenant has been repeatedly late paying the rent warranting a termination of this tenancy under section 47(1)(b) of the Act.

I note that I do not consider utility charges not included in the rent for the purposes of determining repeatedly late payment of rent under section 47(1)(b) of the Act.

In addition, under section 32(3) of the Act, a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. If the tenant does not repair damage as required under section 32(3) of the Act within a reasonable time, the Landlord may issue a notice to end tenancy under section 47(1)(g) of the Act.

I find it is undisputed that the Tenant tore out a patch of carpet near the stairway, which left the area in an unfinished state as shown in photos submitted by both parties. I find the Tenant did not have the Landlord's permission to do so. I find such removal of the carpet to constitute damage to the rental unit. I find the Tenant had removed the carpet by September 2022. I find the Tenant did not replace the carpet by January 2023, when the One Month Notice was issued. I find it has been an additional four months since the One Month Notice was issued and the Tenant still has not repaired or reinstalled the carpet. Therefore, I conclude that the Tenant has caused damage to the rental unit and has not repaired such damage within a reasonable time.

Based on the foregoing, I find the Landlord has established cause for ending this tenancy under sections 47(1)(b) and (g) of the Act. The Tenant's claim to cancel the One Month Notice is dismissed without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states 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 in form and content; and
- during the dispute resolution proceeding, the director dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to comply with requirements of section 52 of the Act and having dismissed the Tenant's claim to cancel the One Month Notice, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

According to Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, where the effective date on the notice to end tenancy has already passed, effective dates for orders of possession have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided. Relevant factors include the point up to which the rent has been paid and the length of the tenancy.

The Tenant seeks to move out of the rental unit by May 31, 2023. However, I find it is undisputed that the Tenant has not paid the Landlord rent in full since April 2023.

Therefore, I do not find it would be appropriate to extend the effective date of the Order of Possession beyond the standard two days.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

3. Are the parties entitled to reimbursement of their filing fees?

The Landlord has been successful in obtaining an Order of Possession, which is also a claim sought in the Landlord's own application. Therefore, I grant the Landlord reimbursement of her filing fee under section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain \$100.00 from the Tenant's security deposit held by the Landlord in full satisfaction of the filing fee awarded.

The Tenant has not been successful in canceling the One Month Notice. I decline to order reimbursement of the Tenant's filing fee under section 72(1) of the Act.

Conclusion

The Landlord is successful in establishing cause for ending this tenancy under the One Month Notice. The Landlord's claim to recover her filing fee is granted. The Landlord is authorized to retain **\$100.00** from the security deposit in full satisfaction of the filing fee awarded.

The Tenant's claims to cancel the One Month Notice and to recover his filing fee are dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The remaining claims made in the parties' applications are severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limits.

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 24, 2023

Residential Tenancy Branch