



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, MNDCT, OLC, FFT

Introduction

This hearing dealt with cross applications. The tenant applied for cancellation of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities ("10 Day Notices") and One Month Notices to End Tenancy for Cause ("One Month Notice"), as amended. The landlord applied for an Order of Possession and Monetary Order for unpaid rent for the month of February 2023.

The hearing was held over two dates and the Interim Decision of May 25, 2023 should be read in conjunction with this decision.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

1. Should the 10 Day Notices be upheld or cancelled?
2. Should the One Month Notices be upheld or cancelled?
3. Is it necessary and appropriate to issue any orders to either of the parties?

Background and Evidence

The tenancy started in July 2012. The tenant is required to pay rent of \$1800.00 on the first day of every month.

The rental unit is a house that has two floors. On each floor are two bedrooms and one bathroom for a total of four bedrooms and two bathrooms in the house rented by the

tenant. There is also a garage on the property that is included in the tenancy agreement.

10 Day Notice dated February 3, 2023

The landlord served the tenant with a 10 Day Notice on February 3, 2023 indicating the tenant failed to pay rent of \$1800.00 that was due on February 1, 2023.

It is undisputed that on December 15, 2022 the landlord served the tenant with a Two Month Notice to end Tenancy for Landlord's Use of Property ("Two Month Notice") with an effective date of February 28, 2023. The tenant filed to dispute the Two Month Notice and a hearing was scheduled for February 16, 2023 (file number provided on the cover page of this decision). The tenant withheld rent for February 2023 as compensation for receiving a Two Month Notice. At the hearing of February 16, 2023, the landlord withdrew the Two Month Notice. The tenant then paid the rent, less the \$100.00 filing fee he was awarded by the Arbitrator presiding over that proceeding, on February 16, 2023.

In the hearing before me, the landlord acknowledged she is not owed any rent for February 2023 but that she wants to end the tenancy because the tenant paid the rent more than five days after receiving the 10 Day Notice. The tenant was of the position that he was entitled to withhold rent for what was to be the last month of his tenancy based on the Two Month Notice and the landlord did not withdraw the Two Month Notice until February 16, 2023. Shortly after the landlord withdrew the Two Month Notice the tenant paid the rent.

Other 10 Day notices

The landlord had issued other 10 Day Notices to the tenant but the landlord stated that she is not seeking to end the tenancy based on those 10 Day Notices because the tenant made payment within time.

One Month Notice issued January 16, 2023

On this notice, the landlord indicated the following reasons for ending the tenancy:

- *Tenant is repeatedly late paying rent.*
- *Tenant has assigned or sublet of rental unit/site/property/park without the landlord's written consent.*

- *Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.*

In the Details of Cause, the landlord wrote:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): 1. The tenant has breached of a material term of the tenancy agreement. The tenant has subleased this house to a basement tenant without written notice from the landlord; 2. The original lease agreement is at \$1800, security deposit of \$900 should be paid within 30 days. Tenant only paid \$500 security deposit in total; 3. The tenant is repeatedly late paying rent.

Repeated late payment of rent

The landlord submitted that the tenant has been a few days late paying rent nearly every month for the past 10 years. The landlord submitted that she often has to send a text message to the tenant asking him to bring her a rent cheque. The landlord acknowledged that she has not had any other discussion with the tenant about the late payment of rent.

The tenant acknowledged that he has been late paying rent on a number of occasions but disagreed that it is almost every month as submitted by the landlord. The tenant testified that sometimes the landlord will send him a message asking for the rent but the tenant had already placed the rent cheque in her mailbox. The tenant explained that he is late at times because he has to wait for a rent cheque to clear from the person renting the basement suite. The tenant stated the landlord did not have any discussions with him about repeated late payment of rent but after he received the One Month Notice he has taken steps to ensure the rent is paid on the first and rent has been on time since.

The landlord agreed that since issuing the One Month Notice, she has been receiving rent from the tenant on time.

Assignment or sublet of rental unit

The landlord testified that the tenant has sublet the basement suite without her written permission. The landlord testified that she had not been to the property in 10 years prior to 2022. When the landlord inspected the property in 2022 she suspected the basement suite was being sublet but she did not have proof of it until she found mail addressed to someone at the rental unit address other than the tenant.

The landlord argued that the tenant must gain the landlord's permission to rent out the basement suite to persons other than his family members.

The tenant testified that the landlord has been to the property on a number of occasions. The tenant estimated that the landlord has been to the property every 1 to 2 years for repair issues and in 2018 when the tenant renovated the basement suite the landlord came to see his work and was pleased with it. The landlord also inspected the property in response to flooding that has occurred in 2020 and 2022. The tenant testified that the landlord has inspected the interior and exterior of the house. The landlord has known of the sublet for a long time as they had a number of conversations about it. The landlord would ask him how the sublet was going, the landlord gave the tenant forms to use for tenancy agreements with the subletters, and the landlord suggested to the tenant that he sublet the basement suite when he first viewed the property and the tenant commented that the house may be too big for his purposes.

The tenant acknowledge that he did not receive written consent to sublet the basement suite but that he had verbal consent starting within the first year of tenancy.

The landlord did not issue any breach letter or warning letter to the tenant with respect to subletting. Nor did the landlord orally inform the tenant that he was in breach of his tenancy agreement prior to issuing the One Month Notice.

Security deposit

The tenancy agreement indicates the security deposit was set at \$900.00.

The landlord testified that the tenant only paid \$300.00 toward a security deposit in 2015 and \$200.00 toward the security deposit in 2017. The landlord could not recall what method of payment the tenant used and there were no receipts for these payments before me. The landlord explained that she demanded payment in 2015 and

2017 because she was getting disconnection notices from BC Hydro because the tenant was not paying the hydro bill within a timely manner. The landlord stated that she did not move to evict the tenant for failure to pay the security deposit sooner because the tenant was paying the monthly rent.

The tenant testified that he paid \$500.00 to the landlord in cash when he viewed the rental unit, to hold it, and another \$400.00 in cash when he signed the tenancy agreement. The tenant was uncertain if the landlord gave him receipts for the cash payments.

In addition to the security deposit, the tenant agreed that he paid the landlord a further \$300.00 and \$200.00 because the hydro bill was in the landlord's name. The tenant paid the landlord cash for these deposits as well and he could not recall if he received a receipt for the cash payments.

The parties were in dispute as to how the BC Hydro bills are provided to the tenant. I suggested the parties investigate this further and ensure the paper bills are sent to the rental unit.

One Month Notice dated March 7, 2023

On this One Month Notice, the landlord indicated the following reasons for ending the tenancy:

- *Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.*
- *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.*

In the Details of Cause, the landlord wrote:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

1. Based on the lease agreement, only one person is allowed to live in this property. But the tenant has subleased the basement to another person, and his girl friend also live in with him at this property. It is significantly breach of a material term of the tenancy agreement.
2. Tenant has changed all locks without landlord authorization and he has also refused to give landlord a set of keys, it is against the lawful right of the landlord.

Unreasonable number of occupants

The landlord submitted that it is reasonable to expect that only one person, the tenant, occupy the rental unit since there is only one tenant named on the tenancy agreement despite the rental unit having four bedrooms. The landlord testified that the tenant's girlfriend lives with him and the basement suite is rented.

The tenant responded that his girlfriend visits him at the rental unit but she does not reside at the rental unit. The tenant has sublet the basement suite but with the landlord's consent, as described previously.

Locks

The landlord testified that she did an inspection of the property on March 7, 2023 and determined the tenant had changed the locks to the rental unit and her key(s) did not work. The landlord asked the tenant for a copy of the keys and he refused to provide them to her.

The tenant testified that he changed the locks approximately 8 years prior after a bad roommate moved out. The tenant claims the landlord did not ask him for a copy of the key then. The tenant testified that on March 7, 2023 the landlord asked the tenant why he changed the locks. The tenant initially stated there was no discussion with the landlord about giving her a copy of the key but the tenant subsequently stated that he was not comfortable giving the landlord a copy of the keys for fear of unlawful entry.

During the hearing, **I ordered the tenant to provide the landlord with a copy of a key(s) for each entry lock on the rental unit, including the upper floor suite, the basement suite, and the garage. The deadline for doing so was within three days of June 8, 2023 and to deliver them to the landlord's mailbox.**

One Month Notice dated April 11, 2023

On this notice, the landlord indicates the following reasons for ending the tenancy:

- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.*
- *Tenant has assigned or sublet the unit/site/property/park without the landlord's written consent.*

In the Details of Cause, the landlord wrote:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

1. Based on the lease agreement, only one person is allowed to live in the house. But the tenant has subleased the basement to another person, and his girl friend also live in with him in this house. He also subleased the garage to a unknown 3rd person. It is significantly breach of a material term of the tenancy agreement.

2. Tenant has refused the landlord to do inspection for the garage. The garage is locked at all times during the inspection. He said his mechanics had the keys, but he as the tenant doesn't have a key to open the garage during the inspection. A suspicious activity would happen on the property.

With respect to an illegal activity, the landlord did not describe any illegal activity taking place at the property other than to say she has suspicions about what is taking place in the garage since she could not gain entry to the larger locked section of the garage.

With respect to subletting, I have already recorded the parties' respective positions above. On this particular notice, however, the landlord also alleged the tenant is subletting the garage.

The tenant denied the garage is sublet. The tenant stated that he stores a valuable motorcycle in the locked area of the garage and that he could not let the landlord in when she came to inspect because his mechanic had the key; however, the tenant subsequently got the key back from the mechanic.

As seen in the previous section, I have ordered the tenant to provide the landlord with a copy of the keys for the locks at the residential property, including the garage. I also informed the parties that the landlord may inspect the property up to once a month and

enter the rental unit, including the basement suite and garage, upon gaining the tenant's oral consent at the time of entry or giving the tenant a written 24 hour notice of entry, as required under section 29 of the Act.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

Based upon everything before me, I provide the following findings and reasons.

10 Day Notice dated February 3, 2023

Under section 51(1) of the Act, a tenant in receipt of a Two Month Notice is entitled to withhold their last month's rent as compensation for receiving a Two Month Notice. This information is provided to both landlords and tenants on the Two Month Notice itself.

The tenant did receive a Two Month Notice from the landlord and February 2023 was to be the last month of tenancy unless the Two Month Notice was cancelled or the landlord withdrew the Two Month Notice. The landlord withdrew the Two Month Notice during the hearing of February 16, 2023 but not before the rent for February 2023 was due and I find the tenant acted reasonably in proceeding to make the rent payment soon after the landlord withdrew the Two Month Notice.

I decline to grant the landlord an Order of Possession when the tenant withheld rent pursuant to a Two Month Notice the landlord had served him and the landlord did not withdraw the Two Month Notice before rent was due for February 2023. When the landlord withdrew the Two Month Notice, the tenant paid the rent the same day.

In light of the above, I grant the tenant's request for cancellation and I deny the landlord's request for an Order of Possession.

One Month Notices

Repeated late payment of rent

According to the landlord the tenant has paid rent late nearly every month for the past 10 years. If that is the case, I am of the view the landlord was tolerant of the behaviour for a long period of time and that one would expect to receive some advance notice if the landlord was no longer going to tolerate the long standing practice.

In this case, both parties provided consistent testimony that the landlord did not have any discussion with the tenant that she would no longer tolerate late payment of rent, despite her previous tolerance of several years, and that the tenant must ensure rent was paid on time from that point forward or the landlord would move to evict the tenant. Once the tenant received the January 16, 2023 One Month Notice, which put him on notice that the landlord would no longer tolerate late payment of rent, the tenant made changes to ensure the landlord received the rent on time. Therefore, I do not find the tenancy at an end due to repeated late payment of rent at this time.

The tenant is however, considered to be on notice that the landlord will no longer tolerate late payment of rent and that if the tenant is late at least three times in the future the late rent payments may be grounds to end the tenancy for repeated late payment of rent.

Assignment or sublet

It is undisputed that the tenant is subletting the basement suite. It is also undisputed that the tenant did not receive written consent from the landlord.

The parties were in dispute as to whether the landlord knew of the subletting for several years and was agreeable to the tenant subletting the basement implicitly or by way of oral statements.

In this case, the landlord claims that she had not been to the property in 10 years. Whereas, the tenant described the landlord attending the property every year or two, including the time he did a renovation in 2018 and when there was flooding in 2020 and 2022.

I find it very hard to believe that the landlord had not been to the property for 10 years and I am inclined to prefer the tenant's testimony that the landlord had been there on a number of occasions.

I also see that the tenant created tenancy agreements for the subletter(s) using tenancy agreements published by the Residential Tenancy Branch and there is the landlord's business card attached. I note the landlord works in a realty office. As such, I find I prefer the tenant's version of events that the landlord knew of the tenant subletting the basement suite and even assisted him in ensuring the proper paperwork was completed.

Although the Act requires a tenant to get written consent to sublet, I find the landlord has acted in such a way over the years to either give consent implicitly or orally and I find the landlord is now estopped from trying to end the subject tenancy due to subletting the basement suite. Under the principle of estoppel, a person can not assert a right that contradicts what was previously said or done or agreed to implicitly. Therefore, I find the landlord cannot now assert that the tenancy must end due to subletting without written consent.

As for the landlord's allegation the tenant is subletting the garage, the tenant denied this to be accurate and I find there is insufficient evidence to support that allegation.

Security deposit

The landlord alleged the tenant only paid a total of \$500.00 toward a \$900.00 security deposit. The tenant refuted that allegation. Neither party produced receipts and the tenant testified he paid the deposit in cash. I do not see any communication from the landlord asking for the payment of the security deposit despite the tenancy starting 11 years prior in 2012.

I find the evidence is not sufficiently clear to make a determination as to how much the tenant actually paid toward the security deposit. However, the landlord's own position was that she did not pursue eviction many years prior because the tenant was paying the rent. From what I heard, the tenant is still paying the rent. Therefore, in the event the tenant did not pay all of the security deposit, I find the landlord is estopped from ending the tenancy now under the principle of estoppel.

Unreasonable number of occupants

The landlord argued that any person residing in the rental unit other than the tenant is an unreasonable number. Term 11 in the tenancy agreement provides the following with respect to guests and occupants:

- 11. OCCUPANTS AND GUESTS**
- 1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
 - 2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
 - 3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the Residential Tenancy Act.

Clearly, paragraph 3 of standard term 11 speaks to the number of occupants in the rental unit and does not apply to any other term limiting who may occupy the rental unit. Having heard the rental unit has four bedrooms and two bathrooms, I am of the view the rental unit could accommodate several people reasonably. Therefore, I reject the landlord's position that any more people than tenant residing in the rental unit is too many.

Locks

Standard term 12 in the tenancy agreement provides the following with respect to changing of locks:

12. LOCKS

- 1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.
- 2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.
- 3) The tenant must not change locks or other means of access to
 - a) common areas of residential property, unless the landlord consents to the change, or
 - b) his or her rental unit, unless the landlord consents in writing to, or a dispute resolution officer has ordered, the change.

Clearly paragraph 3 of standard term 12 requires the tenant to obtain the landlord's written consent to change the locks. I do not see evidence of written consent; however, the tenant argued the tenant changed them several years prior without issue. The landlord stated she did not learn of this until March 7, 2023; however, I find the disputed oral testimony insufficient to meet the landlord's burden of proof.

Under section 29 of the Act, a landlord has a restricted right to enter the rental unit for lawful purposes including inspections, repairs, and in the case of emergencies to protect life or property. As such, a landlord must have a means to access the rental unit. Therefore, I find the landlord entitled to a copy of the keys for the locks on the rental unit.

As seen previously in the Background and Evidence section of this decision, during the hearing:

I ordered the tenant to provide the landlord with a copy of a key for each door lock on the rental unit, including the upper floor suite, the basement suite, and the garage. The deadline for doing so was within three days of June 8, 2023 and to deliver them to the landlord's mailbox.

Failure to comply with my order above is grounds for the landlord to issue another One Month Notice indicating the tenant failed to comply with an Order of the Director as provided under section 47(1)(l) of the Act.

Having issued an order to the tenant to provide keys to the landlord, I further order the landlord to comply with section 29 of the Act with respect to entry into the rental unit.

Below, I have reproduced section 29 for the parties' further reference:

- 29** (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i)the purpose for entering, which must be reasonable;
 - (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d)the landlord has an order of the director authorizing the entry;
 - (e)the tenant has abandoned the rental unit;
 - (f)an emergency exists and the entry is necessary to protect life or property.
- (2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[My emphasis underlined]

Illegal activity

The landlord did not describe any illegal activity taking place on the property and I find her allegation of such was more in the nature of suspicion because she could not gain access to the locked part of the garage. I have issued orders to the tenant to provide the landlord with keys to the rental unit, including the garage, as seen above. The landlord is at liberty to inspect the garage in accordance with section 29 of the Act and

the tenant may not interfere with that right upon receiving a written 24 hour written notice of entry.

Summary

I have reviewed the evidence and provided an analysis for each of the reasons indicated on the notices to end tenancy before me. As described above, I have found the landlord did not establish the tenancy should end for the reasons indicated or is estopped from ending the tenancy now based on past conduct and tolerance. Therefore, I cancel all of the notices to end tenancy before me and the tenancy continues at this time.

The tenant is, however, considered to be on notice that the landlord will no longer tolerate late payment of rent and that the tenant is obligated to ensure his rent is paid in full and on time from hereon in.

I have ordered the tenant to give the landlord keys to all of the locked doors at the rental unit, including the upper suite, the basement suite and the garage. The landlord may only enter the rental unit in accordance with section 29 of the Act.

Having cancelled the notices to end tenancy, I award the tenant recovery of the \$100.00 filing fee paid for his application. The tenant is hereby authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

Conclusion

The tenant's application for cancellation of notices to end tenancy is granted and the tenancy continues at this time. The tenants monetary claim was not heard and is dismissed with leave to reapply.

The landlord's application for an Order of Possession and Monetary Order for unpaid rent is dismissed.

The tenant was ordered to provide the landlord with keys to the door locks at the rental unit including the upper living unit, the basement suite, and the garage. The landlord may enter the rental unit but only in accordance with section 29 of the Act.

The tenant is obligated to pay rent in full and on time from hereon in.

The tenant is authorized to make a one-time deduction of \$100.00 from rent payable to recover the filing fee paid for his application.

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: June 16, 2023

Residential Tenancy Branch