



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the tenant: CNC
 For the landlord: OPC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties (application) for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord.

The landlord applied for an order of possession of the rental unit based on the 1 Month Notice and recovery of the filing fee.

The tenant, the landlord, and the landlord's legal counsel (counsel) attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The parties were affirmed.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral, photographic, and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The tenant denied receiving the landlord's application and notice of hearing, even though it was confirmed sent to the tenant by counsel via registered mail. The tenant admitted that perhaps they missed one of the registered mail notices.

I find the landlord submitted sufficient evidence that the tenant was served their application by registered mail, whether or not the tenant chose to collect the mail.

The tenant confirmed that they received the 3 packages of evidence sent by the landlord.

The landlord denied being served the tenant's application and notice of hearing. The tenant said they delivered their application by handing the documents to the landlord. The tenant was unclear of the date they served the landlord. I find the tenant submitted insufficient evidence that the landlord was served, due to the lack of information as to the specifics of the date. The tenant's only evidence filed was the tenancy agreement and a copy of the 1 Month Notice.

Apart from that, the issues on both applications are the same, and I will consider the merits of the landlord's 1 Month Notice.

During the hearing, the landlord and counsel appeared to disconnect from the hearing, at approximately 9:57 am. Initially, I informed the tenant I would pause the hearing in order to allow the landlord and counsel to return to the hearing. Following a pause of approximately 9 minutes, the hearing continued until approximately 10:19 am, during which the landlord and counsel did not reconnect. The balance of the hearing dealt with the tenant's oral request for an extension of time for the order of possession to be effective. This was due to the tenant's statement that the monthly rent for June 2023 had been paid and they could not move out in 2 days. I will address this request in my Decision.

After the hearing I was informed that the landlord contacted the RTB to say they could not get back into the hearing.

At the time the landlord and counsel disconnected, the parties had already been informed of my Decision, as I had made a determination of the merits of the landlord's 1 Month Notice by that time, giving the reasons why. The reasons will be addressed later in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice issued by the landlord?

Is the landlord entitled to an order of possession of the rental unit pursuant to their Notice and return of their filing fee?

Background and Evidence

The written tenancy agreement showed the tenancy began on July 1, 2022, for a fixed-term through June 30, 2023 and monthly rent of \$1350. As the tenancy agreement did not provide that the tenant must vacate the rental unit at the end of the fixed-term so the landlord could occupy the rental unit, the tenancy would have continued on a month-to-month basis.

In their application, the landlord wrote the following:

The tenant has violated sections 4 and 9 of the House Lease by hoarding and maintaining highly unsanitary living conditions including leaving fruit and other food out in the open and accumulating food waste, garbage, clothing and other clutter. The tenant resides in the basement suite and the landlord lives upstairs. The landlord has noticed fruit flies and ants which results from the tenant's behaviour and the landlord is concerned that rodents will be attracted to the property.

[Reproduced as written]

The 1 Month Notice was dated January 27, 2023, for an effective move-out date of February 28, 2023 and was served on the tenant by attaching it to the tenant's door on January 27, 2023, according to the landlord, and the tenant confirmed in their application receiving the Notice on January 29, 2023.

The causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

2. Tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The evidence filed by the landlord or counsel included labeled photographs of the rental unit taken at various times and in different months, beginning on September 28, 2022, in November 2022, January 2023 and up to April 22, 2023 and written notices to the tenant to clean up their rental unit.

I elected to proceed with hearing from the tenant, as the tenant confirmed receiving the landlord's evidence. I will address the landlord's evidence further in this Decision.

The tenant confirmed that the photos filed by the landlord were from her rental unit. In response to my inquiry as to a specific photo, the tenant did not disagree with the condition of the stove cooktop in the photo. The photo was taken on April 23, 2023. The surface of the cooktop was completely covered with debris and clutter. Included in the clutter was a burnt pan with food, an open food can, another pan with food, a plastic container, and a filled plastic bag. The cooktop was substantially covered in burnt-on food. Just off to the side and touching the cooktop were electrical wires and paper products.

The tenant said that they must have moved items from their sink to be able to wash dishes, so they filled the plastic bag. The tenant submitted that the cooktop did not look like that now.

The tenant submitted that they understood they had an agreement with the landlord that the tenancy would end on June 30, 2023, which was the end of the fixed-term agreement.

Prior to the landlord disconnecting from the hearing, the landlord testified and denied there was an agreement with the tenant to extend the tenancy until June 30, 2023. They testified the rental unit is dirtier now than ever. The landlord shares a home and walls with the tenant and are concerned for their and their dog's safety. The outside of the home is stacked high with clutter.

Analysis

Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based and should be upheld. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

A landlord does not have to provide sufficient evidence for all causes, only on one cause, to meet their burden of proof.

Upon review of the 1 Month Notice to End Tenancy, I find that Notice to be completed in accordance with the requirements of section 52 of the Act.

After reviewing the evidence, I find the landlord had sufficient reason to end the tenancy when they issued the 1 Month Notice to the tenant on January 27, 2023 through their documentary and photographic evidence, with the tenant's confirmation they received the landlord's evidence and that the photos were of their rental unit.

I find that the landlord has provided sufficient evidence to show that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant and put the landlord's property at significant risk.

I have given significant weight to the landlord's undisputed photographs, which show an extreme amount of clutter throughout the rental unit and outside the rental unit. This included a considerable amount of plastic, and flammable material on the heavily used cooktop. This particular photo was taken on April 23, 2023, well after the 1 Month Notice was issued, which shows a pattern of continued hoarding even 3 months after the 1 Month Notice was issued.

Apart from that, I find the photographs show a consistent and continued pattern of clutter and hoarding at least from September 2022 through the end of April 2023.

Another photo from February 28, 2023, has been described by the landlord as follows:

Photo of the tenant's bedroom taken on February 28, 2023 showing clutter, garbage and dirt all over the floor. The doorway to the room is blocked by clutter and garbage posing a potential fire and safety hazard.

In one photo, the tenant's bed was completely covered in clutter. Other photos showed rotting food left outside the rental unit, which could attract rodents or other animals.

I find the photos clearly show the rental unit was unsanitary, unhygienic, filthy and with fire hazards in every room. There was no surface, whether countertop, shelf, or floor free from clutter to the point where there was nowhere to safely enter or exit the rental unit. I find the landlord's evidence overwhelmingly proved the tenant has not maintained the rental unit according to health, cleanliness, and sanitary standards.

The tenant has not submitted evidence showing the state of the home currently or from anytime after the 1 Month Notice was issued indicating an improvement in the situation.

Taken in totality, I find the landlord has submitted sufficient evidence to prove the two above noted causes on the Notice, as I find the state of the tenant's rental unit represents a fire and safety risk.

For this reason, I find it was not necessary to consider the other issue listed on the 1 Month Notice.

For this reason, I **dismiss** the tenant's application requesting cancellation of the Notice, **without leave to reapply**, as I find the 1 Month Notice dated January 27, 2023 valid, supported by the landlord's evidence, and therefore, enforceable. I therefore uphold the Notice and I **order** the tenancy ended on the effective date of that Notice, or February 28, 2023.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable **two (2) days after service on the tenant**.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

I note that I did not extend the effective date of the order of possession to the end of June 2023, due to my findings that the tenant's clutter represents a fire and safety hazard to the residential property.

Landlord's application –

As I have upheld the landlord's 1 Month Notice, I find the landlord's application had merit. I grant the landlord recovery of their filing fee of \$100.

I issue a monetary order to the landlord in the amount of \$100. In the alternative, the landlord is authorized to deduct \$100 from any security deposit held by the landlord to satisfy the monetary award. In that event, the monetary order is cancelled and of no force or effect.

I note that the filing fee was granted to the landlord, even though the order of possession of the rental unit was issued in the tenant's application, as the tenant provided insufficient evidence that they served the landlord with their application. I find the landlord had reason to file their application.

Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the 1 Month Notice is dismissed, without leave to reapply, as I find the landlord submitted sufficient evidence to support their 1 Month Notice.

The landlord has been issued an order of possession for the rental unit, effective two days after service on the tenant.

The landlord is issued a monetary order in the amount of \$100.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 02, 2023

Residential Tenancy Branch