



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL
 CNC, RP, OLC, FFT

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application filed on March 13, 2023, the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on February 28, 2023 (the "Notice") as well as recovery of the filing fee. In the Tenant's Application, filed March 10, 2023, she sought an Order canceling the Notice, an Order that the Landlord comply with the legislation and the tenancy agreement and make repairs to the rental unit, and recovery of the filing fee.

The hearing of the cross applications was scheduled for teleconference hearing at 9:30 a.m. on June 26, 2023. Both parties called into the hearing 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.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Should the Notice be cancelled?
3. Should the Landlord be Ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulations* and/or the tenancy agreement?
4. Should the Landlord be Ordered to make repairs to the rental unit?
5. Should either party recover the filing fee?

Background and Evidence

The Landlord's representative confirmed that she has been managing this rental property since the fall of 2022 and prior to that she was the caretaker. She testified that the tenancy began May 1, 2017.

The parties attended a hearing before me on January 26, 2023 on a Tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. The file number for that matter is included on the unpublished cover page of this my Decision. The reasons giving rise to that Notice were that the Tenant was accumulating items to such an extent that there were safety concerns around access to the rental unit and possible fire hazards.

During the hearing the parties reached an agreement whereby they agreed the Landlord would attend the property on February 28, 2023 for the purposes of viewing the condition of the rental property and to ascertain what repairs were required. Their agreement was recorded in my Decision as a formal Order as follows:

1. The Landlord's representative shall attend the rental unit at 10:00 a.m. on February 28, 2023 for the purposes of inspecting the rental unit, observing any required repairs, taking photos of the rental unit and determining a timeline for any required repairs.
2. If possible, the Tenant shall provide the Landlord's representative with a list of he requested repairs prior to the Landlord's representative's attendance on February 28, 2023, failing which the Tenant shall communicate those requests to the Landlord's representative during their attendance on February 28, 2023.
3. The parties shall make their best efforts to agree upon a timeline for repairs to the rental unit.
4. The Landlord is at liberty to serve another 1 Month Notice to End Tenancy for Cause should the condition of the rental unit warrant such a notice.

The Property Manager, Z.A., confirmed that she attended the rental unit at 10:00 a.m. as agreed and ordered. Also in attendance was T.M., another property manager, and the onsite caretaker, K.E. Z.A. stated that K.E. does the maintenance for the building and therefore she wanted to make sure that K.E. was able to address any maintenance concerns. Z.A. stated that when they arrived the Tenant was combative. Z.A. stated that they did listen for a while, but it became clear the Tenant was not permitting access to her unit. T.M. handed her a business card and explained who she was, yet the Tenant was adamant that no one else was going to be allowed in. K.E. told the Tenant hat she would stay out and let T.M. and Z.A. go in. The Tenant refused and shut the door in their face. Z.A. testified that the Tenant then cursed the through the door. They asked her if she was denying entry and the Tenant responded that she was.

Following the above exchange, T.M. wrote an email about what occurred. That email was provided in evidence before me and confirms Z.A.'s testimony in this regard.

Z.A., K.E., and T.M. left and spoke with the third property manager, K.M., who is the head of rental department. K.M. then called the Tenant (as the Tenant had called and left a voice mail). K.M. reminded the Tenant of the Order and the agreed upon time. K.M. gave the Tenant the option of them coming back at 3:00 p.m. The Tenant refused K.M.'s suggestion and asked for 3 days.

Following this telephone conversation, the Landlord issued the Notice. Z.A. testified that It was hand delivered to the Tenant at 4:00 p.m. on February 28, 2023. T.M. and K.M. went and hand delivered it, as evidenced by the proof of service.

Z.A. confirmed that the Tenant has not granted access to accomplish the stated goals of the Consent Order. Z.A. stated that they were able to enter the rental property to look at the inside of the windows, but the Tenant told Z.A. that she could only look at the inside of the windows.

The Tenant responded as follows. The Tenant confirmed that she did not allow the Landlord's representatives to attend. The Tenant stated that she was only willing to have one person enter the property. The Tenant stated that she suffers from IBS and she had an accident, she then asked them to wait one to three days to return.

The Tenant confirmed she denied access because she was not ready. She also confirmed that she refused to allow them to return at 3:00 p.m. The Tenant stated that she needed 2-3 days to deal with her medical issues, including IBS and other undisclosed issues.

The Tenant stated that it was her decision to accept the 30 day notice rather than grant access.

The Tenant stated that she received two eviction notices; the first erroneously noted that she needed to vacate by March 1, which was less than 24 hours. The Landlord then returned with another eviction notice with the move out date of March 31, 2023.

The Tenant denied that she used any unkind or foul words.

The Tenant confirmed that the Landlord did enter the rental unit to replace the windows. She stated that the window replacement company (father/son) team attended. The Tenant also stated that the caretaker and her husband attended, fixed the toilet, and the front door striker plate as well as installing a curtain rod.

The Tenant stated that the only person who she has a problem with is Z.A. who the Tenant finds rude and a bully.

Z.A. confirmed that K.M. was able to enter the rental property, after some time trying to deal with the windows, and was able to repair the toilet and install curtain rods.

Analysis

The parties attended a prior hearing before me in which an agreement was reached. This Agreement was recorded as a Consent Order in my Decision of January 26, 2023. The Order allowed the Landlord the opportunity to view the rental unit to determine its condition and to ascertain whether repairs were necessary. This Consent Order was beneficial to both parties as at that time the tenancy was in jeopardy and the Landlord agreed the tenancy was able to continue provided the Tenant grant access for this purpose.

The undisputed facts are that the Tenant denied the Landlord entry on February 28, 2023. She says she was afraid as the Landlord came with two others. However, the evidence confirms that she is familiar with one of those in attendance and the other explained her presence and provided a business card. This person also offered to remain outside and let the Property Manager and Caretaker enter without her attendance. The Tenant refused.

The Landlord then offered the Tenant an opportunity to reschedule the inspection to 3:00 p.m. that day. The Tenant claims it was 2:00 p.m. In any event, the Landlord had no obligation to reschedule and did so to accommodate the Tenant's request. Again the Tenant denied the Landlord entry.

Ending a tenancy is a significant request and must only be done in accordance with the *Act*. Section 47 of the *Act* allows a landlord to end a tenancy for cause and reads in part as follows:

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

...

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

...

I find the Tenant failed to comply with the Consent Order of January 26, 2023. As noted, the Consent Order was reached as a compromise, with a mutual benefit. The Order allowed the Landlord an opportunity to inspect the rental unit for its condition, but also to determine if any repairs were required. It is notable that in the application before me the Tenant is asking for an Order that the Landlord make repairs, yet on the agreed upon date she refused the Landlord access to ascertain what repairs were needed.

I find the Tenant's reasons for denying the Landlord access to the rental unit to be unreasonable. She initially stated she was afraid; however, this was not a surprise, as she knew on January 26, 2023 that the Landlord would be attending her rental unit. I also find the Tenant's insistence that only one person attend to be unreasonable. As noted, she was familiar with the Property Manager and Caretaker and was provided information regarding the third representative. When the Tenant expressed concerns, the third representative offered to remain outside; again the Tenant refused.

Even if I accepted the Tenant's evidence that she was upset to the point of having an accident, I find that her refusal to allow the Landlord to attend later in the day to be unreasonable. Again, the Landlord was under no obligation to offer an alternative time to the Tenant, but did so to accommodate the Tenant.

A landlord is entitled to enter a rental unit in accordance with section 29 of the *Act*. This allows a landlord to inspect a rental unit for its condition and to repair and maintain their property as needed. A tenant is entitled to exclusive occupancy and reasonable privacy, subject to the landlord's right of entry in prescribed circumstances. In this case the parties agreed the landlord could attend and the time and date was incorporated into my order to reduce any uncertainty or conflict. At the time they agreed, the tenancy was in jeopardy as the Landlord wished to end it due to the condition of the rental unit. The agreement was mutually beneficial and the Tenant was not justified in denying the Landlord entry at the agreed upon time, or later that day.

I am satisfied the Landlord has cause to end this tenancy pursuant to section 47(1)(l)(ii); as I have found the Tenant failed to comply with my Order of January 26, 2023. The tenancy shall end in accordance with the Notice. As the effective date of the Notice has passed, I grant the Landlord an Order of Possession effective two (2) days after service on the Tenant. The Landlord must serve the Order on the Tenant and may file and enforce it in the B.C. Supreme Court.

Having been successful, the Landlord is entitled to recover the filing fee. The Landlord may retain \$100.00 from the Tenant's security deposit pursuant to section 72 of the *Act*.

I dismiss the Tenant's entire claim without leave to reapply. I dismiss her request for an Order canceling the Notice as I find the Landlord has sufficient cause to end the tenancy. As the tenancy is ending her request for an Order that the Landlord comply with the legislation or the tenancy agreement and make repairs is no longer relevant. Finally, having been unsuccessful in her claims she is not entitled to recover the filing fee.

Conclusion

The Landlord's request for an Order of Possession based on the Notice and recovery of the filing fee is granted.

The Tenant's claim is dismissed without leave to reapply.

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: July 12, 2023

Residential Tenancy Branch