



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes OPC, FFL
 CNC-MT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlord (the Landlord's Application) on March 13, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- An order of possession based on a One Month Notice to End Tenancy for Cause (One Month Notice); and
- Recovery of the filing fee.

This hearing also dealt with an Application that was filed by the Tenant (Tenant's Application) on March 30, 2023, seeking:

- An extension to the period set out under section 47(4) of the Act for disputing the One Month Notice;
- Cancellation of the One Month Notice; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 am on June 26, 2023, and was attended by the Tenant, the Tenant's legal advocate MB, an agent for the Landlord and the personally named respondent AP, and two additional agents for the Landlord, JS, and NT. All testimony provided was affirmed. As the parties acknowledged service of each other's Notices of Dispute Resolution Proceeding (NODRPs), and raised no concerns regarding service, the hearing of both Applications proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that personal recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

The Tenant did not file their Application within the period set out under section 47(4) of the Act. As a result, they sought an extension to this period pursuant to section 66(1) of the Act. As the effective date of the One Month Notice is March 31, 2023, and the Tenant filed their Application on March 30, 2023, I find that section 66(3) of the Act, which prohibits me from extending a time limit for disputing a notice to end tenancy past the effective date of that notice, does not apply. As a result, and as the Agents agreed that the Tenant should be granted the extension due to exceptional medical circumstances, I accepted the Tenant's Application for consideration and permitted the Tenant to dispute the One Month Notice.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession?

Is either party entitled to recovery of their filing fee?

Background and Evidence

The parties agree that the tenancy began on March 1, 1997, and that the Tenant moved into the rental unit a few days early. The parties agree that the tenancy is periodic, and that rent is due on the first day of each month.

The parties agree that the Tenant was personally served with the One Month Notice on February 28, 2023. The One Month Notice in the documentary evidence before me is signed and dated February 28, 2023, has an effective date of March 31, 2023, and lists the following grounds for ending the tenancy:

- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- the tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit, site, or property;
- the tenant has not done required repairs of damage to the unit, site, or property; and
- the tenant has breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after being given written notice to do so.

In the details of cause section, it states that:

- the tenant damaged the property beyond reasonable wear and tear and has failed to make repairs to this damage within a reasonable time;
- has smoked in the unit causing the walls and curtains to become brown from tar;
- denied access to the rental unit twice in one month;
- failed to have the rental unit cleaned and decluttered, to replace the drapes, and to have the walls painted by January 31, 2023, as required;
- failed to have the rental unit cleaned and decluttered, to replace the drapes, and to have the walls painted by the extension date of February 28, 2023, as required;
- the tenant poses a serious risk to the health, safety, or right of the landlord and other occupants, as the tenant has hoarding issues and smokes in the unit, resulting in a fire hazard to the building and tenants; and
- the tenant denied access on multiple occasions after proper notice to enter the rental unit was given.

Although the Tenant acknowledged that the rental unit fell into a state of uncleanliness due to health issues, they and their advocate stated that they tried to resolve the issues prior to issuance of the One Month Notice and that the state of the rental unit is much improved. The Tenant and Advocate stated that cleaners attended the rental unit in February of 2023 and that the Tenant's social workers have been able to coordinate the attendance of cleaners. The Tenant's advocate also argued the cleaning had to be halted temporarily due to the need for mold remediation on the part of the Landlord. The

advocate also argued but the tenants post notice conduct should be considered in determining whether the One Month Notice should be enforced.

The Agents denied that the state of the rental unit is recent or related to the Tenant's recent health struggles, stating that these issues go back many years. The Agents also argued that mold remediation is required because the Tenant failed to report a leak in a timely manner, which the Tenant denied. The parties disputed whether the Tenant had denied access to the rental unit when proper notice under section 29 of the Act had been given, whether an outlet in the rental unit had caught fire and gone unreported by the Tenant, and whether the fire department had deemed the rental unit to be a fire risk.

The parties agreed that the Tenant was issued a breach letter on February 8, 2023, which meets the criteria for a breach letter under Residential Tenancy Policy Guideline (Policy Guideline) #8, however they disputed whether the Tenant was in fact in breach of any material terms.

Analysis

Based on the photographs submitted by the Landlord, I am satisfied that the Tenant has failed to maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit. I am also satisfied by copies of correspondence submitted by the Agents, which appear to have been authored by the Tenant, as well as notices of entry and copies of correspondence sent to the Tenant by the Agents, that the Tenant has denied entry to the rental unit by the Landlord's agents, when proper notice under section 29 of the Act has been given. While I appreciate that the Tenant has health conditions, and wishes to restrict when the rental unit is entered and by whom, I do not find it permissible for the Tenant to deny access to the rental unit by the Landlord's agents when proper notice pursuant to section 29 of the Act has been given. If a tenant wishes to suspend or set conditions on a landlord's right to enter a rental unit, they may file an Application for Dispute Resolution with the Residential Tenancy Branch (Branch) seeking orders to that effect, which the Tenant has not done.

Despite the above, I find that the Landlord has failed to satisfy me that they have grounds to end the tenancy as set out on the One Month Notice. I am not satisfied that the Tenant's lack of cleanliness poses a significant risk to the property, as alleged in the One Month Notice, as the arguments by the Agents were predicated on the assumption that the Tenant's lack of cleanliness and their failure to report a leak, have resulted in damage to the property. However, the parties disputed whether the Tenant

failed to report a leak or leaks in a timely manner, the cause of the mould in the rental unit, as well as whose responsibility it is to remediate the mould issue. I do not find that the Landlord has satisfied me, on a balance of probabilities, that the Tenant is responsible for the mould, or that the mould would not have occurred or progressed if not for the Tenant's lack of cleanliness. As a result, I am not satisfied that the Tenant's lack of cleanliness posed a significant risk to the rental unit. Likewise, I am also not satisfied that the Tenant caused extraordinary damage to the rental unit due to their lack of cleanliness, or a lack of reporting.

With regards to the allegations of a fire risk, the Tenant denied that an outlet fire occurred, and I am not persuaded by the limited photographs submitted that an outlet fire occurred, let alone that it was due to the actions or neglect of the Tenant, or that the Tenant was aware of it but failed to report it. As accurately stated by the advocate at the hearing, the Agents have alleged that a fire risk is present, but submitted no documentary or other corroboratory evidence this is the case, such as a report from the fire department. Further to this, although the Tenant smokes in the rental unit, there was no dispute that the Tenant is permitted to smoke in the rental unit under their tenancy agreement. As such, and given the length of the tenancy, I do not find it unusual that the walls and drapes have been impacted by smoke. Finally, although the Agents argued that the Tenant had caused several burns due to smoking, the Tenant denied these allegations, and nothing submitted by the Landlord satisfies me this is the case. As a result, I find that the Agents have also failed to satisfy me that the Tenant poses any significant fire risk to the property or that they have caused extraordinary damage to the rental unit or property due to smoking.

As I am not satisfied that the Tenant caused damage to the rental unit, as set out above, I am also not satisfied that the Tenant has failed to complete required repairs. Finally, I find that the Agents have failed to satisfy me that the terms relied on by them to end the tenancy for breach of a material term, are in fact material terms of the tenancy agreement. Although the Agents argued that terms 6(b) and 11 of the tenancy agreement are material terms, neither of these terms state that they are material and the parties disagreed at the hearing about whether they were. As a result, I find that the Landlord, who bears the burden of proof with regards to the materiality of these terms, has failed to satisfy me that the above noted terms are material terms of the tenancy agreement.

As a result of the above, I find that the Landlord has failed to satisfy me that they have the grounds set out on the One Month Notice to end the tenancy. I therefore grant the

Tenant's Application seeking its cancellation. However, pursuant to section 62(3) of the Act, I order that the Tenant maintain reasonable health and cleanliness standards in the rental unit at all times, as required by section 32(2) of the Act. I also order the Tenant not to deny access to the rental unit by the Landlord's agents, or other parties authorized by the Landlord to enter the rental unit, if proper notice of entry has been given under section 29 of the Act, unless they have an order from the Branch suspending or setting conditions on the Landlord's right to enter.

The Tenant is cautioned that failure to abide by the above orders may constitute grounds to end the tenancy under section 47 of the Act in the future.

As the Tenant was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is permitted to deduct this amount from the next months rent payable under the tenancy agreement.

As the One Month notice is cancelled, I therefore dismiss the Landlord's Application in its entirety, without leave to reapply.

Conclusion

The One Month Notice is cancelled, and I therefore order that the tenancy continue in full force and affect until it is ended in accordance with the Act.

Pursuant to section 72(2)(a) of the Act, the Tenant is permitted to deduct \$100.00 from the next months rent payable under the tenancy agreement in recovery of the filing fee.

The Landlord's Application is dismissed without leave to reapply.

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* regarding the calculation of time. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected if this decision has been issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: July 26, 2023

Residential Tenancy Branch