



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding RED DOOR HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on March 30, 2023, wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause and an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act") the *Residential Tenancy Regulation*, and/or the residential tenancy agreement.

The hearing was conducted by teleconference at 9:30 a.m. on July 10, 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.

Preliminary Matter

At the outset of the hearing the Tenant claimed she did not receive the Landlord's evidence. The Landlord's representative testified the evidence was sent to the Tenant by registered mail on June 29, 2023 and the Tenant refused to pick up the evidence. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served with the Landlord's evidence on July 4, 2023 and I proceeded with the hearing in their absence.

No other 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. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Act*, the *Regulations*, and/or the tenancy agreement?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord's representative testified as follows. The tenancy began March 1, 2011. The rental unit is a subsidized housing unit.

The circumstances giving rise to the Landlord's request to end the tenancy are as follows:

- During an annual unit inspection on January 30th, 2023, concerns were noted by the Property Manager and Operations Manager regarding the condition of the unit:
 - throughout the entire unit there is enormous amounts of clutter;
 - the kitchen is full of items such as garbage, extension cords, broken mirrors and glass on the ceiling and walls and there are shards of glass everywhere;
 - the outlets and the baseboard heaters are blocked;
 - the bathroom is in a condition which blocks access to the shower and the bathtub and the bathroom sink and toilet are difficult to access;
 - the clutter prevents access under the sink to deal with any repairs;
 - the clutter also prevents access to the closet where the electrical panel is located;
 - the light fixtures are missing and broken; and
 - the smoke alarms are not in functioning condition.
- The "Bar Tech fire safety" did an annual inspection and they declared the rental unit a hazard.
- The Landlord gave the Tenant a written warning and they gave her until March 27, 2023 for a follow up inspection. The Landlord gave her a formal entry notice on March 23, 2023.
- On the 27th the Landlord's representatives attended and none of the concerns had been addressed.
- The Representatives estimated that it would cost \$30,000.00 to repair and clean the unit.

In support the Landlord provided written statements from those doing the inspections as well as photos of the rental unit.

At that time when they were doing the inspection the Tenant claimed she was not doing anything wrong and does not seem to appreciate the severity of the situation.

A copy of the Notice was provided in evidence before me. The Notice was signed but not dated by the Landlord.

In response the Tenant testified as follows.

- The Tenant stated that the Landlord's evidence was false.
- The Tenant claimed that she took a video of the rental unit during the inspection and that the pathway was clear to all the rooms.
- The Tenant claimed that she homeschools and maintains her home in a clean and safe manner.
- She stated that there was nothing wrong with her kitchen.
- She stated that they use the shower 5 times a day.
- The Tenant claimed that she had permission to have the mirrored walls. She stated that they have never been an issue. She denied there were broken pieces of glass on the floor.
- The Tenant also further stated that she has not added any items to her rental unit and that it is in the same condition as it has been for 12 years. The Tenant noted that she has not caused any fires, structural or safety issues in those 12 years.
- The Tenant stated that everything is "completely normal".
- The Tenant stated that the fire department also told her that everything was fine.

In reply, the Landlord's representative stated that they have not submitted any false evidence. He further stated that the photos which were submitted by the Landlord depict the condition of the rental unit.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Act*. A landlord may end a tenancy for cause pursuant to section 47 of the *Act* which reads as follows:

The Landlord seeks to end the tenancy for Cause pursuant to section 47 of the Act, which reads 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:

- (a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b)the tenant is repeatedly late paying rent;
- (c)there are an unreasonable number of occupants in a rental unit;
- (d)the tenant or a person permitted on the residential property by the tenant has
 - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii)put the landlord's property at significant risk;
- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i)has caused or is likely to cause damage to the landlord's property,
 - (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;
- (h)the tenant
 - (i)has failed to comply with a material term, and
 - (ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(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.

(2)A notice under this section must end the tenancy effective on a date that is

(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.

(3)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

As noted above, pursuant to section 47(3), a 1 Month Notice must comply with section 52 of the *Act*. Section 52 of the *Act* provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The “approved form” as referenced in section 52(e) is #RTB-33 and which can be found online at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb33.pdf>

As noted, the Notice in this case was not dated. **As such, I find the Notice fails to comply with section 52 of the Act and is therefore ineffective. I therefore grant the Tenants’ request for an Order canceling the Notice. The tenancy shall continue until ended in accordance with the Act.**

I wish to point out that had I found the Notice complied, I would have ended this tenancy for the reasons cited on the Notice. The Landlord submitted numerous photos which depict a tremendous amount of clutter in the rental unit. Those photos show limited access to rooms and essential items such as the bathroom fixtures and electrical panel. The Landlord’s concerns are corroborated by the fire inspector who deemed the property a fire hazard.

The Tenant denies the Landlord’s claims and alleges the Landlord has submitted false evidence; however, she refused to pick up the Landlord’s evidence package, such that these allegations are meritless.

The photos and evidence submitted by the Landlord confirm that the Tenant keeps the rental unit in a condition which puts the Landlord’s property and others at risk. It is also clear that the Landlord gave the Tenant a reasonable amount of time to correct the situation and clean up her rental unit.

It appears as though the Tenant is not able to see the rental unit for what it is and has a perspective which is not grounded in reality. Not surprisingly she did not clean the unit or take corrective measures when warned by the Landlord in the earlier party of 2023, as she does not see anything wrong with its condition.

The Tenant is cautioned that to continue to keep her rental unit in this condition puts her tenancy at significant risk.

Due to time constraints the Tenant's request for an Order that the Landlord comply with the *Act*, the *Regulations* and the tenancy agreement was not dealt with; I therefore dismiss that portion of her claim with leave to reapply.

Conclusion

The Notice fails to comply with section 52 of the *Act*, and is therefore ineffective. The Tenant's request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's request for an Order that the Landlord comply with the *Act*, the *Regulations* and the tenancy agreement is dismissed with 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 13, 2023

Residential Tenancy Branch