Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the application and respective evidence submissions.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause? Is either party entitled to recovery of the filing fee?

Background and Evidence

The tenancy for this one-bedroom ground floor apartment unit began on March 15, 1981.

The landlord issued a One Month Notice to the tenant dated April 24, 2023, received by the tenant on April 28, 2023. The landlord issued a revised One Month Notice to the tenant by registered mail on April 27, 2023. The registered mail package containing the

revised notice was returned as unclaimed. The landlord subsequently posted a copy to the tenant's door on June 1, 2023. The tenant acknowledged receipt of the revised notice. The revised Notice just added an additional ground for ending the tenancy. The tenant filed an application to dispute the original Notice within the applicable time period under the Act.

The original One Month Notice was issued on the grounds that the tenant breached a material term of the tenancy agreement. The revised One Month Notice included the ground that the tenant has put the landlord's property at risk.

The landlord submits that the tenant has breached clause #21 of her tenancy agreement which states as follows:

> *'21.. Liquid filled items. The tenant must not bring in to the rental unit or on the residential property any waterbed, aquarium, appliance or other property that can be considered to be liquid filled, without prior written consent.'*

The landlord submits that the tenant has installed a washer machine in the unit in breach of the tenancy agreement which does not permit liquid filled appliances. The landlord submitted copies of four separate caution letters issued to the tenant dated August 13, 2018, August 12, 2021, February 9, 2023, and February 24, 2023 by which the tenant was notified of the breach and provided an opportunity to correct the breach by removing the washer from the unit. The landlord submitted a picture of the washing machine sitting beside the kitchen counter with hoses going over the counter and connecting to the kitchen faucet. The landlord submits the small one-bedroom apartment is not meant to have a washer and dryer. The landlord submits they did not receive a copy of the original tenancy agreement from the previous owners when they took over the property. They have requested the tenant to provide a copy but she has refused. The copy of the "tenancy agreement" submitted by the tenant is not the original tenancy agreement but only the Application for tenancy. The Application form includes "conditions of tenancy", clause #5 of which states "laundry equipment may only be used at times posted in the laundry room". The landlord submits that this supports the landlord's argument that laundry was never intended to be provided with this tenancy. The landlord submits that clause #21 prohibiting liquid filled appliances is included on all of its other tenancy agreements. The landlord submits that a card operated laundry is available 24 hours for all tenants to use in the building and they do not understand why the tenant cannot use that. The landlord submits they have provided the tenant multiple opportunities to comply, but the tenant has been

consistently deceitful stating she is not using the machine in the unit but just stores it there. She has now admitted to using it regularly.

The landlord further submits that the tenant has put the property at risk due to the moisture from the dryer which is not vented properly outside the unit but instead it is just sitting in the corner of the kitchen area with the exhaust pipe exposed.

The tenant testified that she purchased and installed the washer and dryer in 2008 and the previous landlord was aware of this. She does laundry twice per week and installed and uses the appliances in accordance with manufacturer instructions. The current landlord did not take over the property until May 2017 almost 10 years after she had purchased the appliances. She does not understand what the issue is as the previous management company took no issue. The tenant submits that her tenancy agreement does not contain any stipulation in regard to liquid fills appliances being prohibited.

The tenant submits that the dryer is vented into a bucket which is an indoor dryer venting kit. The tenant submits the dryer has not caused any damage nor has the landlord submitted any evidence of said damage.

The tenant's advocate submits the landlord has installed a washer and dryer in other units.

In reply, the landlord submits that they did try installing a washer and dryer in other units only as an experiment and this was done in only four units. However, the appliances installed were much smaller two-in-one units the size of a dishwasher and were professionally installed. The landlord submits the tenant has not provided any evidence of consent from the previous landlord.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

Although neither party was able to submit the original tenancy agreement, I find that on a balance of probabilities that the original agreement contained clause #21 which prohibited liquid filled appliances. I find the copy of the "tenancy agreement" submitted

by the tenant was not the original lease agreement but only the Application for tenancy. I make this finding as this document submitted by the tenant is even titled “Application for Tenancy”. I accept the landlord’s testimony that the original tenancy agreement was not passed on by the previous landlord. I accept the landlord’s testimony and find that this clause is a standard clause in all their leases for this property. Additionally, the “Application” also includes conditions on the use of the separate laundry provided for residents of the building. I find this further supports the landlord’s position that these small one-bedroom apartment units were never intended to include laundry appliances. I find the tenant provided insufficient evidence that installing laundry machines was done with the approval of the previous landlord. The fact that she may have had the appliances for 10 years before the previous landlord took over is not on its own proof of consent. The tenant submitted no documentary or witness testimony to demonstrate consent was granted by the previous landlord.

I find the landlord took reasonable steps to notify the tenant of the breach. The landlord sent the tenant multiple cautionary notices over a period of 4.5 years since taking over management of the property. I find the landlord also provided the tenant with more than ample opportunity to stop using the washing machine and remove it from the unit prior to issuing the One Month Notice. I find the landlord cautioned the tenant that her tenancy was in jeopardy if she did not correct the breach. The tenant was given a written notice on February 9, 2023 and provided 14 days to remove the washing machine and then another written notice on February 24, 2023, providing her with an additional 14 days. I find the tenant failed to act on the notices and comply with her tenancy agreement and as such is in material breach of her tenancy.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds of a material breach. I make no finding on whether the tenant put the landlord’s property at risk. The tenant’s application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 30, 2023

Residential Tenancy Branch