



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding DOLE ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, FFT
CNC, OLC, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under section 62(3) of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agent, DH, legal counsel R.H., and Tenants M.G. and M.P. attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Service

Both parties acknowledged receipt of:

- the Landlord's May 26, 2023 One Month Notice served by attaching the notice on the Tenants' door. The Tenants confirmed receipt. Deemed served on May 29, 2023.
- the Tenants' Proceeding Package served by registered mail on June 15, 2023. The Landlord confirmed receipt. Deemed served on June 20, 2023;

- the Landlord's August 24, 2023 One Month Notice served by attaching the notice on the Tenants' door. The Tenants confirmed receipt. Deemed served on August 27, 2023.
- the Tenants' Proceeding Package served by registered mail on September 11, 2023. The Landlord confirmed receipt. Deemed served on September 16, 2023;
- the Landlord's first evidence package served by attaching the package on the Tenants' door on September 30, 2023. The Tenants confirmed receipt. Deemed served on October 3, 2023; and,
- the Landlord's second evidence package served by attaching the package on the Tenants' door on October 1, 2023. The Tenants confirmed receipt. Deemed served on October 4, 2023.

Pursuant to sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the above documents related to the hearing in accordance with the Act.

The Tenants served their evidence late for both files for this matter. Rules of Procedure 2.5, 3.1, and 3.14 state:

2.5 Documents that must be submitted with an Application for Dispute

Resolution: *To the extent possible, the applicant must submit the following documents at the same time as the application is submitted:*

...

- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

3.1 Documents that must be served with the Notice of Dispute

Resolution Proceeding Package: *The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch or within a different period specified by the director, serve each respondent with copies of the following:*

...

- d) *any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

3.14 Evidence not submitted at the time of Application for Dispute

Resolution: *Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy*

Branch directly or through a Service BC Office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17. (Emphasis added)

I find the Tenants' evidence was served to the Landlord beyond the allowable time limit noted in the Rules of Procedure. The Applicant Instructions for Dispute Resolution received with both Proceeding Packages state that the Tenants were to serve their evidence before the submission deadline. I decline to accept the Tenants' evidence in this matter.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice (X2)?
2. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
3. Are the Tenants entitled to recovery of the application filing fee (X2)?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on January 19, 2022. The fixed term ended on July 19, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,095.00 including \$40.00 for two parking spots payable on the first day of each month. A security deposit of \$517.50 was collected at the start of the tenancy and is still held by the Landlord.

The May 26 One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, 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. The effective date of the One Month Notice was June 30, 2023.

The Landlord provided further details of the causes to end this tenancy as:

On the afternoon of May 18, 2023 Tenant M.D.G. was using the buildings laundry facilities. During this use, a significant quantity of water had escaped in to the hallway of the building. Tenant M.D.G. did not notify his landlord or warn other tenants of this hazard as required by section 31 of the signed tenancy Agreement. A large amount of water remained on the hallway floor as a slip and fall hazard after Tenant M.D.G.'s use of the laundry facilities. On May 25, 2023 the landlord received an Incident report from Tenant M.D.G., the contents of which are not supported by the buildings security camera footage and a separate incident report.

The Landlord's videos show Tenant M.G. using the laundry facilities, then water leaking out into the hallway from the laundry room. The videos show Tenant M.G. returning to the laundry room but ignoring the water and not dealing with it, even after another tenant comes in and points it out to Tenant M.G. In video four, it shows the property manager seeing the water leak and proceeding to clean it up the excess water in the hall, and clean the laundry room with a shopvac.

The tenancy agreement specifies what a person is to do if there is a hazard or an emergency. It states:

Section 31. HAZARDS AND EMERGENCIES. If the tenant discovers ... water ... on the residential property, the tenant must immediately notify the landlord or landlord's contact person and warn other persons on the residential property who may be affected by the emergency or hazard. ...

Neither tenant reported the incident immediately.

On May 26, 2023, the building managers made their report of the water found in the hallway outside the laundry room, but noted that there was no water on the laundry room floor.

The damage done to the laundry room and hall requires new vinyl composite tiles to be installed on the floor area. Landlord's legal counsel stated that additional remediation may be required if there is found to be asbestos.

Tenant M.G. testified that he did not notice any water in the hall when he returned to do his laundry. Tenant M.G. was notified by the tenant who came into the laundry room and told him about the water in the hall in the Landlord's video number three. This tenant made some attempts to mop up the water in the hall with rags. Tenant M.G.

stated he left the laundry room 34 minutes into video number three after the other tenant had told him about the water, and he said he still did not notice the water.

Tenant M.G. testified that his incident report stated that at no point did he see any water. He stated that if he had seen water, he would have told the Landlord.

The August 24 One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, the Tenants have not done required repairs of damage to the unit, and the Tenants are non-compliant with an order under the legislation within 30 days after the Tenants received the order or the date in the order. The effective date of the One Month Notice was September 30, 2023.

The Landlord provided further details of the causes to end this tenancy as:

- *Tenants damaged kitchen cupboard, porcelain bathtub and sink in bathroom of Rental Unit;*
- *Tenants have failed to make repairs to the property regarding the holes in the wall, the curtain rod, and cleaning the carpets as ordered in the decision of Arbitrator A [sic] file numbers XXXXXXXX3 and XXXXXXXX0.*
- *Tenants' rental unit is the source of ongoing noise complaints which significantly interferes with or reasonably disturbs other occupants in the building. Tenants were warned via letter dated February 9, 2023 that further noise complaints would result in the Landlord issuing a One Month Notice to End Tenancy.*

On January 29, 2023, the Landlord received an incident report complaint about the Tenants saying, *"...I heard a male in suite XXX yelling at the female resident. On several occasions in the past few months I have heard the male resident in #XXX hit the walls inside the suite as well as striking the inside of the elevator."*

The Landlord testified that the rental unit is in a constant state of disrepair and degradation. An Order was issued on June 9, 2023, and the repairs remain incomplete. In May and June 2023, the Landlord has witnessed more damage chips in tub, sink, and damage to the kitchen cupboards.

The Tenants took over the unit from Tenant M.P.'s father as is. The condition inspection states that the rental unit is in good condition.

Landlord's legal counsel submitted that the carpets were installed on November 30, 2017, and no stains, damage or wear to the carpet is noted on condition inspection reports for Tenant M.P.'s father or the Tenants. Carpet stains were noted on December 6, 2022, and were expected to be addressed by December 22, 2022.

On June 9, 2023, an Arbitrator's order stated,

...I order the Tenants to have the blinds and the doors installed, the doors painted, and the carpets cleaned such that the stains are removed, or replaced, as soon as possible, and not later than 30 days from today's date. Should the Tenants fail to comply, the Landlord may serve a One Month Notice pursuant to section 47(1)(l) of the Act.

On a condition inspection completed on July 10, 2023, the Landlord submits that the carpet stains remain visible at 20 and 40 seconds into the video uploaded by the Landlord.

The bedroom curtains, although not completely repaired, seem to be hung onto unbroken curtain rings in the rod. There are extra curtain hooks that do not have unbroken curtain rings for the hooks to pair up with. The Landlord submits that the bedroom blinds still remain pulled/removed from the rod at 50 seconds to 2 minutes into the video.

The Landlord's legal counsel submits that the condition inspection report does not disclose damage to the porcelain tub and bathroom sink. In a May 23, 2023 letter to the Tenants, the Landlord notes significant damage to the porcelain tub and sink which the Landlord claims is more than normal wear and tear.

The Landlord has done many inspections of the Tenants' rental unit.

In a June 21, 2023 letter to the Tenants, the Landlord discusses the implications of an improper repair completed on the kitchen cupboard. The Landlord does not take responsibility for the repair, and further the failure of an unauthorized repair cannot be considered regular wear and tear.

The Tenants stated that the move-in condition inspection report dated January 19, 2022 was completed at their dining room table. Tenant M.P. said they just transferred everything from her dad's name to their names, and they never walked around the rental unit with the Landlord to complete the move-in condition inspection report.

Tenant M.P. testified that all the damage had been repaired in their rental unit by July 1, 2023. The blinds had been fixed by June 28, 2023 and the carpets were professionally cleaned on July 1, 2023. The Tenants provided receipts to the Landlord showing the work had been completed. The carpet cleaning company noted on their receipt that all the stains had been removed, but there was still some wear and tear in the carpet fabric.

Tenant M.P. stated she wrote an incident report to the Landlord around June 20, 2023 when the kitchen cupboard completely fell off in her hand when she opened the cupboard door. She stated they were under the impression that the Landlord would undertake the repair to the cupboard door, but when they received the Landlord's June 21, 2023 letter, she said they were told they were at fault, and it was not wear and tear.

The Tenants testified that they never previously attempted to make any repairs to the kitchen cupboard door.

The Tenants state that the small chip damage to the porcelain in the bathroom has been there since before Tenant M.P.'s father resided in the unit.

For the noise complaint, the Tenants stated they had one complaint in December and one in February, where they were playing a game of Jenga. They stated they explained this to the Landlord.

The Tenants are not comfortable approaching the Landlord for repairs to their rental unit. They feel like they have to walk around like mice so as not to receive yet another complaint from the Landlord. The Tenants said the Landlord is going to keep finding "*minute things, speculative things*" to get the Tenants out of the building. The Tenants feel harassed.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

I find the Tenants were deemed served with the May 26, 2023 One Month Notice on May 29, 2023. I find that the May 26, 2023 One Month Notice complied with the form and content requirements of section 52 of the Act. The Tenants applied for dispute resolution on June 4, 2023 which was within 10 days after receiving this One Month Notice.

The Landlord must prove one of:

47(1) ...

- (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;*

After a water leak from the laundry room on May 18, 2023, Landlord's legal counsel submitted that the Landlord tested both washing machines and found them to be operational and not leaking. Legal counsel's submissions stated that Tenant M.G. misused the washing machine in the laundry room. Because of this misuse, there was a significant water leak in the hall outside the laundry room. The Landlord submits that an estimate from the floor covering company indicates that the water damage was not minimal.

Tenant M.G. stated that he did not notice water on the floor in the hall outside the laundry room. I believe this to be true, as Tenant M.G. walked in from outside wearing sunglasses and stepped in the water. At one point, another tenant noticed the water and told Tenant M.G. who, at this time, was back in the laundry room. This tenant did some mopping up of the water in the hall outside the laundry room. Shortly later, the building manager noticed the water in the hall outside the laundry room, and dealt with it.

I find the Tenant was aware of the water leak based on his conversation with the other tenant who had come into the laundry room and announced to him that there was water in the hall. The other tenant wiped up some of the water, and after, the building managers cleaned up the remaining water and possibly assessed the situation.

I find that the Landlord has not proven on a balance of probabilities that whatever damage that occurred that caused the water leak was caused by deliberate actions or neglect of Tenant M.G. It appeared from the video that some clean up had occurred, and that Tenant M.G. did not investigate it further after leaving the laundry room. The building managers May 26, 2023 report told that there was no water on the laundry room floor. The floor covering company quote does not explain the damage to the laundry room floor, that was never wet, or hallway, that was wet for a relatively short period of time. I find the Landlord has not proven on a balance of probabilities cause to end the tenancy based on the May 26, 2023 One Month Notice and I cancel the May 26, 2023 One Month Notice.

I find the Tenants were deemed served with the August 24, 2023 One Month Notice on August 27, 2023. I find that the August 24, 2023 One Month Notice complied with the form and content requirements of section 52 of the Act. The Tenants applied for dispute resolution on August 31, 2023 which was within 10 days after receiving this One Month Notice.

The Landlord must prove one of:

47(1) ...

- (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,*
- (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;*
- (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.*

The Landlord submitted one noise complaint dated January 29, 2023. The Tenants understood there was one complaint, but they did not hear about more. I find that this one complaint from another tenant cannot be considered as significant or unreasonable.

The Landlord submitted that the rental unit is in a constant state of disrepair and degradation, and the Tenants have not complied with an arbitrator's order within the 30 day time period. I find that the Landlord's July 10, 2023 video, does not substantiate serious, or any, carpet stains visible at the timepoints, or surrounding timepoints, submitted by the Landlord.

I find that the Tenants repaired the bedroom curtains, although Tenant M.P. does admit that there are a couple curtain hooks not inserted in curtain rings in the rod. During the time of the repair, the Tenant was approximately seven months pregnant, and was not going to be climbing on chairs to complete these repairs. This last minor repair requires about two more intact curtain rings which will allow the Tenants to finish hanging the curtains. I do not find the Tenants have not complied with the arbitrator's order.

As for the broken kitchen cupboard door that the Landlord refuses to repair, the Tenants do not admit to causing the damage due to their actions or neglect. Tenant M.P. stated she was opening it, and it came off in her hand. The Tenants state they did not do any previous repairs to the cupboard. The Landlord relies on a move-in condition inspection which does not indicate any issues with the kitchen cupboards. Tenant M.P. stated that they did not do a walk through the rental unit when they were switching the unit from her father to the Tenants. I find that the Landlord has not proven that this kitchen cupboard door was broken due to the Tenants' actions or neglect. I find the Landlord must repair this kitchen cupboard door to provide and maintain the residential property in a state of decoration and repair that complies with section 32(1) of the Act.

I find the Landlord has not proven on a balance of probabilities cause to end the tenancy based on the August 24, 2023 One Month Notice and I cancel this One Month Notice. The tenancy will continue until ended in accordance with the Act.

The Tenants are entitled to their right of quiet enjoyment, including freedom from unreasonable disturbance. The relationship between the Tenants and the Landlord is palpably strained. Unfortunately, the Tenants must work with the Landlord and not hesitate to report damages, incidents, or other matters that may need to be told to the Landlord. The Landlord can decide if it is something they need to address further.

I find the Landlord has been constant is watching these Tenants. The Landlord has conducted several inspections of the rental unit to monitor completion of repairs. I find the Tenants have completed ordered repairs. There appeared to be two curtain rings that were broken and needed replacement in the bedroom curtains, but the curtains were not in a deplorable state. The Tenants are on high alert to ensure they conduct

themselves accordingly in their tenancy. The Landlord must be mindful of the Tenants' right to quiet enjoyment of their rental unit.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fees. The Tenants may, pursuant to section 72(2)(a) of the Act, deduct \$200.00 from one month's rent due to the Landlord.

Conclusion

The Tenants' application to cancel the Landlord's May 26, 2023 One Month Notice is granted.

The Tenants' application to cancel the Landlord's August 24, 2023 One Month Notice is granted.

The tenancy will continue until ended in accordance with the Act.

The Tenants may deduct \$200.00 from one month's rent to recover both their application filing fees.

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

Dated: November 8, 2023

Residential Tenancy Branch