

DECISION

Introduction

This hearing dealt with cross-applications including:

The tenants' July 21, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

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

The landlord's August 25, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for the Tenant's One Month Notice that they would be ending the tenancy under section 45 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Service of Notice and Evidence

The parties accepted Service of Notice and Evidence regarding their respective claims.

Preliminary Matters

I amended the address of the rental unit on the Tenants' File to add the unit number on the landlord's request.

Issues to be Decided

- Did the Tenants provide Notice that they will be Vacating under section 45 of the Act, if so, is the landlord entitled to an order of possession?
- Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Is either party entitled to recover the filing fee from the other?

Background and Evidence

The parties agreed that the tenancy agreement has been ongoing since March 2020. Monthly rent is said to be set at \$1,698.00 due at the first of the month, and a \$800.00 security deposit was collected. The parties agreed that the tenants rent a house that is located on a larger 30-acre parcel of land that is owned and operated by the landlord. This larger parcel includes 10 other rental units and a commercially zoned area.

The parties agreed that the landlord issued a One-Month Notice to End Tenancy on July 7, 2023, and that it was served to the tenants' door on the day it was issued. The landlord stated that the tenants have been consistently disrespectful and aggressive throughout their tenancy. This Notice identifies a stated move-out date of August 31, 2023, and was issued for reasons of:

- Tenant or person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk
- Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

Regarding the claim for significant interference, the landlord referred to their evidence submitted and stated that they gave Notice to the tenants in April 2023, that the landlord would be away in May 2023 and so the landlord would be sending their property manager to attend to the property. The landlord stated that the tenants got aggressive with the property manager and prevented them from doing their assigned work. The landlord referred to a written statement from the property manager that was submitted as evidence.

The tenants provided inconsistent testimony. They first claimed that they did not know the property manager. Then they acknowledged knowing the property manager and that they received notice from the landlord in April 2023. The tenants denied having a negative interaction with the property manager in May 2023 and alleged that the landlord falsified their evidence.

Regarding the landlord's claim that the tenants jeopardized the health, safety or lawful right of the landlord in the property, the landlord referred to their evidence submitted and testified that the tenants have consistently ignored the landlords' written warnings and requests regarding BBQ and firepit use on the property.

The landlord stated that there was a large wildfire that burned 12 acres of the 30-acre parcel and so the landlord is very diligent about minimizing the fire risk. The landlord

testified that their Fire Insurance Adjuster has informed them that they will not cover the landlord's property if a fire starts from the tenants. The landlord also referred to various photos submitted as evidence to illustrate their increased risk profile due to nearby trees and other flammable items that the tenants fail to consider when using their BBQ.

The landlord stated that they issued the July 14, 2023, Notice, due to the tenants' failure to respond to the landlord's repeated efforts to ensure fire safety on the property. The landlord provided a written statement from a colleague as evidence of a July 10, 2023, attempt to clearly communicate fire safety requirements to the tenants. The landlord testified that these requirements were ignored.

The tenants provided inconsistent testimony. They first denied receiving any written Notice from the landlord regarding the BBQ and the fire pit. Then they acknowledged a history of written Notices from the landlord, including a written Notice in June 2023. The tenants denied being unsafe with the BBQ or firepits and testified that they consulted with the local fire chief.

The landlord testified that the tenants put the landlord's property at significant risk and also caused extraordinary damage in April 2023 because they did not give Notice of extreme and heavy water on the private road on the property that is viewable from the tenants' living room. The landlord provided photos of damage caused to the dirt road and emphasized that they have never before seen such damage, stating that it could have been easily avoided had the tenants informed the landlord of the initial water backup when it occurred. The landlord referred to evidence submitted and testified that they have an established history with the tenants of requesting Notice when water backs up on the road. The landlord claimed this was malicious damage by the tenants.

The tenants provided inconsistent testimony. They first denied there was damage to the road and testified that they were most concerned about water overflow in the back of the property. The landlord testified that the water on the back of the property was not a risk because the water stayed well within an engineered culvert. Pictures were provided as evidence. The tenants acknowledged observing the water damage on the road in front of the property and that they did not provide Notice to the landlord of any observed damage despite the landlord being available, attending to the culvert on the property.

The parties agreed that part of the Tenants' claim that was heard by the RTB in a previous hearing on July 20, 2023, was directly related to the condition of this damaged access road, with the tenants requesting that the road be restored.

The landlord stated that there was a previous incident where the tenants also damaged the rental unit. They referred to their evidence submitted to state that in summer 2022 they had to give Notice to the tenants because the tenants set up their lawn furniture in the common area and this was not allowed because it blocked everyone else. The landlord referred to photos submitted to illustrate that tenants then took this furniture up to the flat tar roof of the rental unit, causing 20 holes to the tar roof that needed to be repaired by the landlord. The tenants acknowledged this chain of events.

The landlord stated that there was also a negative interaction in March 2023 when they were attempting to clear snow from the property. The landlord referred to their evidence submitted to provide photos of how the tenants left their vehicles and trailers in the common area thereby impairing the landlords' efforts to clear snow. The landlord stated that the male tenant got very aggressive and in the landlord's face. The landlord stated that this happened after they attempted to clear snow around the tenants' vehicles. The landlord stated that they filed a police report after this event.

The tenants provided inconsistent testimony. They initially denied interacting with the landlord. They then spoke at length about how the landlord changed their mind between seasons about how the landlord would manage snow clearing. The tenants stated that they had been managing their own snow clearing. The tenants acknowledged parking their vehicles in the common area, and claimed this was because they are unable to transport their trailer up the access road that was identified as damaged above.

Regarding the landlord's claims that the tenants had given Notice to End Tenancy, the parties agreed that Tenant S.K. gave notice that they would be vacating the property. The tenants gave inconsistent testimony. First they denied that tenant S.K. was a named tenant on the tenancy agreement, then they agreed that Tenant S.K. became a named tenant in 2022 as shown in the landlord's evidence.

The landlord provided a copy of tenant S.K.'s August 23, 2023, Notice, that they would be vacating September 30, 2023. The landlord also provided a copy of the August 23, 2023, Letter they received from T.K. and R.K. requesting that their rent be reduced from \$1,924.00 down to \$1,624.00 once tenant S.K. vacated. Tenants T.K. and R.K. denied giving Notice that they were vacating. They stated that S.K. was vacating to care for an ailing parent.

The landlord stated that they are tired of the tenants spinning all facts to their benefit.

Analysis

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One-Month Notice.

I find that the tenants applied to dispute the One-Month Notice within the timeframe allowed by section 47 of the Act because they applied to dispute the Notice on July 21, 2023, after receiving it on July 14, 2023.

Regarding the landlord's various reasons for issuing the One-Month Notice to End Tenancy on July 14, 2023, I considered all testimony and evidence specifically referred

to by the parties during this hearing. I find that the landlord established on the balance of probabilities that they were entitled to issue the Notice because:

1. I find that the tenants repeatedly caused extraordinary damage to the landlord's property:
 - They installed their lawn furniture on the tarred roof of the house in March 2022 without permission in response to the landlord's request that the furniture be removed from the common area
 - They did not give Notice to the landlord of the road washout on the property as it occurred in April 2023 despite the landlord being available
2. I find that the tenants seriously jeopardized the health or safety or lawful right of the landlord by repeatedly refusing the landlords' multiple written warnings and spoken guidance regarding safe BBQ and fire use in the rental unit and on the landlord's property – the landlord's property is located in a wildfire area which means that safe fire use is very important
3. I find that the tenants regularly and significantly interfered with the landlord's attempts to manage the larger property on which the tenants' rental unit is located. Examples include:
 - The tenants blocking snow clearing efforts in March 2023
 - The tenants impeding efforts of the landlord's property manager in May 2023

I give little weight to the tenants' evidence and testimony because I found them inconsistent and lacking credibility. I also note that the examples specifically addressed during the hearing as reason for the One Month Notice, are a small portion of the many events carefully documented by the landlord and specifically included in their evidence.

For the above reasons, the tenants' application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act is dismissed, without leave to reapply.

I did not formally consider the validity of the Tenant's Notice that they would vacate because I dismissed the tenants' challenge of the landlord's One-Month Notice.

Is the landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the July 14, 2023, Notice complies with section 52 of the Act.

I find that the landlord is entitled to an Order of Possession. I will use my discretion available under RTB Policy Guideline 54 to make this Order effective seven (7) days after it is served on the tenants. I provide these additional 5 days for the tenants to vacate because I recognize that the tenancy has been ongoing for three years.

Recovery of Filing Fees

Because the landlords were successful in securing an order of possession, I find that they are entitled to recover the \$100.00 filing fee from the tenants' security deposit. The tenants' application to recover the filing fees is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord **effective seven (7) days after it is served on the tenant(s)**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I Order that the landlord retain \$100.00 from the tenants \$800.00 security deposit.

The tenants' application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act is dismissed, without leave to reapply.

The tenants' application to recover the filing fees 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 Act.

November 2, 2023

Residential Tenancy Branch