

DECISION

Introduction

This hearing dealt with multiple cross applications including:

The tenants' August 3, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The tenants' September 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
- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The landlord's October 1, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Preliminary Matters

The parties were informed that we would be focusing on the One-Month Notice to End Tenancy and that unrelated items would not be considered. I therefore severed the following items from the applications in front of me under RTB Rule of Procedure 2.3:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act

Service of Notice and Evidence

The tenant K.M. attended the hearing with their family. The landlord also attended the hearing. The parties accepted service of notice and evidence.

Issues to be Decided

- 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 for this application from the landlord?

Background and Evidence

The residential property is a four-unit residential property, with two units on both floors. The tenants have resided within the residential property for more than 8 years.

The landlord purchased the property in early 2021.

The parties signed a new tenancy agreement on June 1, 2021. This is a month-to-month agreement with rent currently set at \$1,009.93 and paid in full. The parties agreed that the landlord is holding a \$450.00 security deposit. This tenancy agreement refers to Unit C in the property. The parties agreed that the tenants have since taken occupancy of unit D. The landlord stated that they made unit D available to the tenants after completing interior repairs.

The parties have participated in two prior RTB hearings.

The tenant K.M. stated that the:

- Landlord is harassing the tenants
- Landlord keeps issuing Notices to end tenancy
- The landlord is a liar
- The landlord is a racist

The landlord referred to videos submitted as evidence, including an assault video. The landlord testified that they purchased the residential property along with the next-door residential property as part of a larger effort to build additional housing while not disrupting existing housing.

The parties agreed that a One Month Notice to End Tenancy (the Notice) was issued to the tenant on September 16, 2023. This Notice identifies a stated move-out date of November 1, 2023, and was issued for reasons of:

- Tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The parties agreed that the Notice was issued in response to Tenant K.M.'s smoking on the deck of the property outside of their unit. The landlord wrote as their reasons for issuing this Notice, that they are liable under the local municipal bylaw and risk a potential \$10,000.00 penalty for each day that persons are allowed to smoke on common property. The tenant acknowledged this Notice and claimed that they are exempted from the bylaw due to their smoking on residential property, which is not public or common.

The parties eventually agreed that the tenants signed an addendum to the 2021 tenancy agreement that includes the following clause:

10) Smoking – No smoking of any kind, is permitted inside the building. The landlord reserved the right to designate a smoking are(sic) on the property.

The tenant K.M. provided inconsistent testimony regarding this addendum to the tenancy agreement that was signed on June 1, 2021, by:

- Claiming that the text of the full text of the addendum was never provided
- Claiming that the addendum was never signed by the tenants
- Claiming that the landlord never informed the tenants that smoking was not allowed on the deck
- Acknowledging that the text of the addendum was first provided by email to the tenant on May 31, 2021, and was later signed by the tenants

The tenant K.M. also provided inconsistent testimony about smoking on the residential property, by:

- Denying that the landlord's in-laws ever approached the tenant about smoke
- Stating that the landlord never said anything about smoking
- Stating that the landlord never put anything in writing about smoking
- Claiming that they never smoke inside the property – they smoke on the deck
- Claiming that they are exempted from rules about smoking because they are smoking in their property, on the deck
- Acknowledged that they were served a One-Month Notice to End tenancy on June 25, 2023, about smoking

Tenant K.M. also acknowledged prior conversation with the landlord, which the landlord followed up in email on June 19, 2023, with the following go forward terms including:

3. No smoking on the enclosed common deck. Smoking is only allowed behind the undercover parking and at the top corner of the lot

The landlord stated that this June 25, 2023, notice was not addressed at the September 15, 2023, RTB Hearing. The landlord read into the teleconference record their written reasons for issuing this Notice which included the following offer:

“landlord will drop this notice and it will not be required in front of the RTB if K.M. states in writing that moving forward he would only smoke in the designated areas with an understanding that a notice to end tenancy will be provided if there is a failure to comply”

The landlord stated that the tenant did not make any such commitment.

The tenant K.M. was again inconsistent, testifying that:

- Landlord said K.M. could smoke on the patio
- Landlord never identified an approved place to smoke
- The approved smoking place is not covered
- The approved smoking place is a hardship
- The tenant K.M. only smokes 3 cigarettes a day when home.

The tenants agreed that the tenant K.M. continues to smoke on the patio.

The tenants claimed that Tenant K.M.’s smoking should not matter because the prior neighbour in Unit C, who shared the same deck, also used to smoke and they alleged the landlord did not do anything about this. The tenants stated that this individual moved out in late August 2023. The landlord acknowledged not taking formal action against this other tenant, stating this was because the other tenant indicated they were vacating.

The parties agreed that the landlord’s in-laws previously lived beneath the tenants in this dispute for about six months before moving to the other lower unit (opposite of the tenants) in June 2023. The parties agreed that the in-laws have since moved out of the residential property. The tenant K.M. gave inconsistent testimony about the landlord’s in-laws, acknowledging that the in-laws vacated due to the smoking, while also denying that the in-laws ever approached K.M. about K.M.’s smoking.

The landlord read into the record, the text of their in-laws’ notice to end tenancy, emphasizing that the in-laws left the property due to health concerns from K.M.’s smoking as well as other K.M. related concerns.

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 September 21, 2023, after receiving it on September 16, 2023. I considered all testimony and evidence specifically referred to by the parties during this hearing.

Regarding frequent comments from tenant K.M. during the hearing that the landlord and their in-laws are racists, with allegations that the tenants keep receiving eviction notices as some sort of racist attack, I confirmed for the parties during the hearing that the Residential Tenancy Board is not the Human Rights Tribunal.

I also note because it discussed during the hearing, that the landlord provided the tenants with a newly renovated rental unit after purchasing the residential property in 2021. This newly renovated unit appears to have been provided at the same monthly rate of rent as their previous, unrenovated unit that the tenants occupied for 8 or so years. Furthermore, I reviewed emails between the landlord and the Tenant K.M. as well as videos provided of interactions between the landlord and Tenant K.M. I found the landlord to be a careful and cautious communicator in both forms, as they work to fulfill their obligations as landlord of a multi-unit property.

Regarding the legal framework for smoking in common areas in the Province of BC, I refer to the following content from a [BC Government webpage](#):

The [Tobacco and Vapour Products Control Regulation](#) sets a six metre zone around all doorways, air intakes and open windows to any public and work places in B.C. This means there must be a six metre area around any doorway, air intake or open window to any public or work place in which no one can stand and use tobacco or vapour products. This protects against emissions entering these places and protects people as they enter or exit.

Places that may be considered public or workplaces include stores, offices, and entrances to condominiums/apartment buildings, work vehicles (e.g., delivery vans), public transit, taxis, cafes, casinos and pubs/bars.

This is important to emphasize because the parties agreed that the tenant K.M. continues to smoke on the deck of the residential property that contains 4 rental units. I found that tenant K.M. provided inconsistent testimony and failed to articulate why, if

they only smoke 3 cigarettes a day, they are unable to respond to the landlord's clear and persistent documentation regarding where to smoke on the residential property.

The landlord is required as the landlord of a multi-unit residential property to provide clear and consistent documentation about appropriate smoking behaviours so that secondhand smoke does not enter the living or working areas of others. Regarding the other tenant who previously resided next door in the residential property and allegedly smoked on the deck like Tenant K.M, I find this unrelated to the dispute before me. I am only responsible for the dispute before me.

I find that the landlord was justified in issuing the September 16, 2023, One-Month Notice to End Tenancy for significant interference and unreasonable disturbance related to smoking 47(d) of the Act because the parties agreed:

- The tenants signed a June 2021 addendum to the tenancy agreement that sets out landlord expectations for tenant smoking on the residential property
- There was June 2023 discussion and email correspondence between the landlords and tenant K.M. regarding designated smoking areas on the property
- The landlord's enforcement efforts regarding smoking by Tenant K.M. were in response to complaints from the landlord's in-laws who began occupying the unit below the tenants sometime in early 2023
- The tenants were issued a previous One-Month Notice to End Tenancy for smoking on June 25, 2023
- The landlord's in-laws have since vacated the residential property, largely due to smoking by Tenant K.M.
- Tenant K.M. continues to smoke on the deck of the four-unit residential property

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.

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 Notice complies with section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession.

I make this Order effective fourteen (14) days after it is served on the tenants.

I am providing 14 days to vacate under RTB Policy Guideline 54 because the tenants have resided within residential property for nearly a decade. I do not provide any more time than this however, because I find that the tenants continue to interfere with and disturb the landlord and their operation of the residential property and the adjacent residential property.

Is the tenant entitled to recover the filing fee for this application from the landlord?

The tenants were not successful in either of their applications.

The landlord was successful in their application.

I order that the landlord is entitled to retain \$100.00 from the tenant's security deposit to recover the filing fee for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the landlord **effective fourteen (14) days after service of this Order on the tenant**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia against the named tenant in this dispute.

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

I dismiss the tenant's requests to recover the filing fees for their applications. I do not give leave to reapply.

I order that the landlord retain \$100.00 from the tenant's security deposit to recover the filing fee for this application under section 72 of the Act.

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 24, 2023

Residential Tenancy Branch