

DECISION

Introduction

This hearing dealt with the Tenant's and Landlord's Applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice)
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement
- an order for the Landlord to make repairs to the rental unit
- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement
- authorization to recover the filing fee for this application from the Landlord

The Landlord applied for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice)
- authorization to recover the filing fee for this application from the Tenant

The Landlord acknowledged being served with the Tenant's hearing package by registered mail sent September 9, 2023. The Landlord acknowledged being served the Tenant's evidence by registered mail and email, at least two weeks prior to the hearing date.

The Tenant acknowledged being served with the Landlord's hearing package in person on September 18, 2023. The Tenant acknowledged receiving the Landlord's evidence by registered mail and email at least two weeks prior to the hearing date.

Preliminary Matters

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

At the start of the hearing, some of the Tenant's claims were not determined to not be related to the most urgent claims about the One Month Notice to end tenancy. Under Rule 2.3, the following claims of the Tenant are dismissed with leave to reapply:

- an order for the Landlord to make repairs to the rental unit
- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement

I note that in the interim decision dated November 28, 2023, I incorrectly dismissed these claims without leave to reapply. This Decision replaces the interim decision. The Tenant has leave to reapply for the above noted issues if they have not been previously decided on by an arbitrator.

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 the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Facts and Analysis

This tenancy began on May 1, 2020 with a monthly rent of \$2200.00 due the first of each month, and with a security deposit of \$1100.00. The Landlord issued the One Month Notice on August 23, 2023, and served it to the Tenant in person.

The parties have given extensive testimony and evidence regarding various issues arising from this Tenancy. I will refer only to what is relevant to my decision. The relevant facts and my analysis for the One Month Notice will be addressed first, followed by the same for the Tenant's monetary claims.

One Month Notice

The Landlord claims the Tenant has put the Landlord's property at significant risk, and has caused extraordinary damage to the rental unit. The Landlord claims the Tenant has failed to keep the rental unit clean and sanitary. The Landlord testified that the Tenant keeps piles of belongings stacked floor to ceiling throughout the rental unit, with limited space to walk through any living space. The Landlord claims the space is dirty and unsanitary and it is impossible to clean with all the belongings stored on the floors

and surfaces of the rental unit. The Landlord claims this unsanitary and cluttered condition of the rental unit has caused the rat infestation in the rental unit. The Landlord provided photos of the rental unit and surrounding property, reportedly taken in September 2023 and again on October 14, 2023, as evidence to support their claims.

The Tenant testified that there were issues with rats in the rental unit from the start of the tenancy. The Tenant claims they reported the rats to the Landlord verbally on multiple occasions, but the Landlord did not address the Tenant's concerns or have pest control attend at the rental unit. The Tenant provided written statements from previous tenants of the rental unit stating that the rats were present during those previous tenancies and never addressed by the Landlord.

Both parties testified that there has been extensive damage caused by the rats to the walls, floors, structures, bathtub, pipes, and electrical systems. The rental unit is very unsanitary because it is covered in rat droppings, there have been dead rats found in various areas in and around the rental unit.

The Landlord claims the Tenant never reported the rat infestation to the Landlord in writing or in person, until after the One Month Notice was given to the Tenant. The Tenant testified that they were unaware that they had to request repairs in writing, and did not know they could apply to the residential tenancy branch for repairs until they obtained a tenancy advocate after being served with the One Month Notice.

Should the Landlord's One Month Notice Be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act says that a landlord may issue a one month notice to end tenancy if they have cause to do so.

Section 32(2) of the Act says a tenant must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit.

The Landlord claims that the Tenant's failure to comply with section 32 of the Act has caused the rat infestation in the rental unit. The Landlord claims the condition of the rental unit and resulting rat infestation have put the Landlord's property at significant risk and caused extraordinary damage to the rental unit.

The photos of the rental unit provided by the Landlord show that the Tenant has collected and stored an excessive amount of belongings and materials throughout the rental unit. There are piles of belongings which take up most of the living space, bedrooms, kitchen, and bathroom in the rental unit, with small spaces clear for use. The Landlord provided evidence from licensed pest control providers and that these conditions are likely to attract and support the infestation of pests such as mice or rats.

I am not convinced by the Tenant's testimony or evidence that the rats were present in the rental unit from the start of the tenancy. The Tenant provided written statements about rats reportedly from previous tenants. This evidence is not convincing, because the Tenant did not provide any documentary evidence to prove that these were previously tenants of the rental unit, or provide any documentary proof of rat infestation these people claim to have experienced in the rental unit. These third parties did not attend the hearing to give affirmed testimony nor to verify their identities.

Based on the evidence of both parties, the parties communicated by text message about rent payment, inspections, and other tenancy issues on a regular basis. I do not find it likely that the Tenant would not text or otherwise communicate in writing with the Landlord about the rat infestation for over three years, especially if the rats were a problem right from the start of the tenancy.

The Landlord testified they were not aware of the rat infestation until around the time the One Month Notice was issued to the Tenant. The Landlord testified that the Tenant had been repeatedly denying the Landlord access for inspections since August 2022, and the Tenant told the Landlord it was because the rental unit was not clean or ready to be inspected on each occasion.

Based on careful consideration of all the evidence and testimony of the parties, I find on a balance of probabilities that the Tenant failed to comply with section 32(2) of the Act, and that the condition of the rental unit during this tenancy likely caused the rat infestation in the rental unit. The rat infestation has caused serious damage to the walls, floors, bathtub, drainage, and electrical systems throughout the rental unit. I find it likely that the Landlord will be required to make extensive repairs throughout the rental unit to restore it to the health, safety, and housing standards required by law.

For these reasons, I find the Landlord has proven on a balance of probabilities that the Tenant's breach of section 32(2) of the Act and the condition of the rental unit has put the Landlord's property at significant risk and caused extraordinary damage to the rental unit.

The Tenant's application to cancel the One Month Notice is dismissed, without leave to reapply. I find the Landlord is entitled to an Order of Possession based on the One Month Notice under sections 47 and 55 of the Act.

Tenant's Monetary Claims

The Tenant claims \$1915.00 for the cost to replace the fridge in the rental unit multiple times. The Tenant claims they replaced the main fridge in the rental unit on three occasions after rats chewed through the wires. The cost to replace the fridge each time was \$200.00, for a total of \$600.00. The tenant claims they purchased a mini fridge and mini freezer, for \$35.00 and \$80.00 respectively, after the third fridge was damaged. The Tenant claims they asked the Landlord to replace the fridge and the Landlord refused.

The Tenant did not provide receipts for the purchase of these appliances. The Tenant did not provide any documentary evidence of broken refrigerators, nor of requests to the Landlord for repairs or replacement of these items. The Landlord denies being made aware of damage to the fridge, or being asked to replace the fridge.

The Tenant claims \$2000.00 for loss of quiet enjoyment of the rental unit (\$50.00 per month x 40 months). The Tenant testified that the Landlord attends at the rental unit without notice for unscheduled inspections. The Landlord has entered the rental unit without notice or permission on various occasions. The Landlord has requested identification from guests and visitors of the Tenant.

One example of this behavior was the Landlord entering the Tenant's rental unit in the middle of the night, and walking into the bedroom of one of the occupants while they were sleeping. The Tenant claims the Landlord is constantly badgering and harassing them and threatening eviction. The Landlord denies these claims. The Landlord testified that the Tenant has refused access for inspections of the rental unit, and the Landlord has never entered the rental unit without consent and notice. The Tenant did not provide any documentary evidence in support of their claims.

The Tenant claims \$6040.00 in compensation for illegal rent increases applied by the Landlord and paid by the Tenant. The Tenant testified that the Landlord increased the rent three times, by sending the Tenant a text message about the rent increase. The first increase was of \$150.00 starting May 1, 2021. The second increase was of \$65.00 starting April 1, 2022. The third increase was of \$65.00 starting February 1, 2023.

In total, the Tenant claims they overpaid rent by \$1650.00 from May 2021 to April 2022, by \$2150.00 from April 2022 to February 2023, and by \$2240.00 from February 2023 to September 2023. The Tenant provided documentary evidence including the Landlord's text message rent increases, and a monetary order worksheet including calculations of the total rent overpaid.

Both parties testified that the Landlord has never given the Tenant a Notice of Rent Increase. Both parties testified the Landlord gave these rent increases over text message, and the increases were applied immediately without three months' notice. The Landlord claims the Tenant gave their implied consent by paying the rent increases without complaint until the One Month Notice was issued.

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Section 67 of the Act says if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, an arbitrator may order that party to pay compensation to the other party.

To be awarded compensation for loss under the Act, regulation, or tenancy agreement, the Tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- monetary loss has resulted from this failure to comply
- proof of the value of the loss
- the tenant acted reasonably to minimize that damage or loss

I find the Tenant has not provided evidence of the cost to replace the fridge. In the absence of any receipt or proof of payment, I find the Tenant has failed to prove their claim of \$1915.00 for the cost to replace the fridge in the rental unit.

I find the Tenant has not provided any documentary evidence in support of their claims about loss of quiet enjoyment of the rental unit. The Tenant provided testimony about this claim, but did not provide specific dates or times of the reported incidents with the Landlord that led to loss of quiet enjoyment.

This hearing was very long and over time when the Tenant began their testimony about quiet enjoyment. Had the Tenant had more time to give testimony, they may have been able to provide further detail or explanation about this claim. For this reason, I dismiss the Tenant's claim for \$2000.00 for loss of quiet enjoyment with leave to reapply. I make no findings on the merits of this claim.

Section 42 of the Act says a landlord must give a tenant notice of a rent increase in the approved form at least 3 months before the effective date of the increase.

Section 43(5) of the Act says if a landlord collects a rent increase that does not comply with the Act, the tenant may recover the increase.

Based on the testimony of both parties and the evidence of the Tenant, I find the Landlord applied a rent increase on three occasions, as set out in the Tenant's testimony and evidence, in breach of section 42 of the Act. I find the Tenant paid these rent increases and are entitled to recover the overpaid amount in accordance with section 43 of the Act. I have confirmed the Tenant's calculations of the over paid rent.

For these reasons, I find the Tenant is entitled to a Monetary Order of \$6040.00 for loss under sections 43 and 67 of the Act.

Is the Tenant entitled to recover the filing fee for this application from the Landlord? Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As both parties were successful in their applications, I find that both parties would be entitled to recover their filing fee under section 72 of the Act. As each party paid \$100.00 for their filing fee, the recovery fees are cancelled out.

Conclusion

I grant an Order of Possession to the Landlord **effective on February 15, 2024, after the Tenant is served this Order.** The Landlord must serve this Order to the Tenant. The Tenant and anyone else occupying the rental unit must move out by February 15, 2024.

If the Tenant does not comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Tenant a Monetary Order of \$6040.00 under sections 43 and 67 of the Act. I Order the Landlord to pay \$6040.00 to the Tenant.

The Tenant must serve this Order to the Landlord as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the small Claims Division of the Provincial 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 Act.

Dated: January 10, 2024

Residential Tenancy Branch