



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC-MT, PSF, LRE, OLC, FFT
OPR, OPC-DR, MNRL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord, which have been joined to heard together.

The tenant has applied for:

- an order cancelling a notice to end the tenancy for cause;
- more time to dispute a notice to end the tenancy;
- an order that the landlords provide services or facilities required by the tenancy agreement or the law;
- an order limiting or setting conditions on the landlords' right to enter the rental unit;
- an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlords for the cost of the application.

The landlords have applied for:

- an order of possession for unpaid rent or utilities;
- an order of possession for cause;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenant.

The tenant and all 3 landlords attended the hearing. One of the landlords and the tenant each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The landlords have provided a Proof of Service document showing that the Notice of Dispute Resolution Proceeding was served to the tenant on March 27, 2024 by attaching it to the door of the rental unit. That is not an acceptable method of serving a Notice of Dispute Resolution Proceeding, and the Proof of Service form indicates that that method is ONLY applicable for landlord applications requesting an order of possession. Therefore, the only applications of the landlords that I consider are the landlord's applications seeking an order of possession. The landlords' application for a monetary order for unpaid rent or utilities is dismissed with leave to reapply.

At the commencement of the hearing I questioned the parties with respect to exchange of evidence. The parties agreed that all of the landlords' evidence has been provided to the tenant. The landlords did not agree that the tenant has provided evidence to the landlords. The tenant indicated that on March 28, 2024 one of the landlords was served with the Notice of Dispute Resolution Proceeding, a copy of the tenancy agreement, eviction letters, Respondent Instructions and Fact Sheet, and the tenant showed him all of the tenant's evidence. The tenant has provided a Proof of Service document entitled "Proof of Service Notice of Dispute Resolution Proceeding" which is signed by one of the landlords. However, a tenant must serve the evidence to the landlords, not just show it to a landlord. As a result, I am not satisfied that the tenant has provided the evidence to the landlords, except for the tenancy agreement and eviction letters.

All evidence of the landlords has been reviewed and the evidence I find relevant to the notices to end the tenancy is considered in this Decision.

Also, at the commencement of the hearing I advised the parties that the Rules of Procedure specify that multiple applications contained in a single application must be related, and I found that the primary applications of the parties deal with a Notice to end the tenancy for cause. The hearing focused on notices to end the tenancy.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that more time should be permitted to dispute a One Month Notice to End Tenancy For Cause?
- Have the landlords established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?

- Have the landlords established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord (RM) testified that this fixed-term tenancy began on October 1, 2022 and reverted to a month-to-month tenancy after September 30, 2023 and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month was payable on the last day of each month for the following month, which was increased by \$46.00 per month, to \$1,246.00 but a copy of a Notice of Rent Increase has not been provided for this hearing. On October 1, 2022 the landlords collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlords reside in the upper level of the home. A Roommate Agreement has been provided by both parties for this hearing.

The landlord further testified that on March 6, 2024 the landlord served the tenant with a One Month Notice to End Tenancy For Cause (the One Month Notice) by posting it to the door of the rental unit with a witness. A copy of the One Month Notice has been provided by the tenant for this hearing and it is dated March 6, 2024 and contains an effective date of vacancy of April 13, 2024. The reasons for issuing it state:

- Tenant or a 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 a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The tenant has been extremely clutter-some with items overtaking the garage. Things began to fall on the landlord, and the landlord told the tenant to clean it up. The tenant and her dad loaded items from the garage; which took 2 weeks to empty it.

On February 28, 2024 the landlords inspected the rental unit. The tenant ushered the landlord out very quickly. The inside of the rental unit is a concern for safety and a fire hazard; the landlord couldn't walk through it. The tenant got hostile, and the tenant's father was there.

The tenant also tampered with the hot water tank numerous times. Fortis inspected, and said it have been tampered with and that it should not be on the pilot setting, but on another setting. The tenant also shuts it off. No one else has access to the hot water tank. The tenant had tampered with a coupling on the tank, and the technician couldn't get it lit, and gas was emitting as well as carbon monoxide. The landlords were suffering nausea and were without hot water for a long time. It happened more than once, and the landlord has called a plumber 3 times, April 10, 2024 being the last time. The landlords have provided a copy of a plumbing invoice dated April 10, 2024, which states: "Bradford white gas tank not lighting; thermopile positive/negative crossed at gas valve; HWT was shut off and wiring to gas valve was tampered."

Since the landlords gave the Notice to end the tenancy, the tenant has been tampering with everything. The tenant is disruptive to everyone in the house.

The landlord smells drugs all the time, and people are arriving all the time.

Prior to issuing the One Month Notice the tenant had 2 other people staying in the rental unit for over 2 weeks. The landlord is an ex-drug user and knows the smell of crack, which the landlord has smelled from the rental unit. More than 2 weeks is not a guest.

The landlord also gave the tenant a cable box, included in the rent, then got an outrageous bill and found out that a person rented Netflix and Video on Demand. The tenant told the landlord that a person staying with the tenant is no longer there and would no longer be welcome. However, on March 21, 2024 the landlord received another outrageous bill.

The tenant has also changed a lock without the landlords' consent. The tenant refuses to give the landlords a key. No written notice of a breach of a material term was given, but the landlord spoke to the tenant, who refused.

On April 2, 2024 the tenant was served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the 10 Day Notice) by taping it to the door of the rental unit. A copy of the first 2 of 3 pages has been provided by the landlords for this hearing. It is dated April 2, 2024 and contains an effective date of vacancy of April 13, 2024 for unpaid rent in the amount of \$1,246.00 that was due on April 1, 2024. The tenant did not serve the landlords with a Notice of Dispute Resolution Proceeding or application

disputing the 10 Day Notice, and did not pay the rent within 5 days of receipt. Arrears are currently \$2,492.00 for the months of April and May, 2024.

The tenant testified that the One Month Notice to End Tenancy For Cause came as a shock. It was very overwhelming and the tenant tried to get someone to help. The tenant suffers from severe PTSD.

The tenant believes that both notices to end the tenancy were disputed. The landlords chose to end the tenancy right after the tenant paid the rent.

The tenant did not pay the rent; there was no hot water. The tenant denies tampering with the hot water tank. The tenant had a technician look at it, and there was nothing wrong except gas on the side of the house was shut off.

The tenant changed a deadbolt, but the landlords have a key for the door handle.

The landlords have invaded the tenant's privacy. The tenant believes the landlords have installed a camera, which is why they feel there is illegal activity.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

The tenant indicated that the tenant intended to dispute a notice to end the tenancy for unpaid rent or utilities, however, the record does not indicate that, nor does the Notice of Dispute Resolution Proceeding that was served to the landlords. Therefore, I find that the tenant has not disputed the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities.

The law states that once served with a 10 Day Notice, the tenant has 5 days to pay the rent or dispute it within that 5 day period. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy, and I make that finding. However, the landlords have provided only pages 1 and 2 of the 3-page Notice, and therefore, I cannot be satisfied that the Notice given is in the approved form. As a result, I dismiss the landlords' application for an order of possession for unpaid rent or utilities.

The tenant has applied for more time than prescribed to dispute the One Month Notice to End Tenancy For Cause (the Notice), indicating that the tenant suffers from severe

PTSD and other health issues. Since the Notice was served on March 6, 2024 by posting it to the door of the rental unit, it is deemed to have been served 3 days later, or March 9, 2024. The tenant then had 10 days to file the dispute, or March 19, 2024. The tenant filed the dispute on March 21, 2024. Considering the undisputed health issues of the tenant, and the few days between the required time-line and the date of the tenant's application, I grant the additional 2 days time.

I have reviewed the invoice from the plumber provided by the landlords for this hearing, and I accept the undisputed testimony of the landlord that no other occupants have access to the hot water tank. No one, other than a certified technician should attempt to operate or fix any natural gas appliance. The tenant testified that the tenant had a company look at it, who found that the outside gas lever was turned off, but there is no evidence to support that. I prefer the evidence provided by the landlords, the invoice from the plumber, which states that the hot water tank had been tampered with.

I am satisfied that the tenant, or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of the landlords, and put the landlords' property at significant risk. Therefore, it is not necessary for me to rule on the other reasons for ending the tenancy. The tenant's application to cancel the Notice is dismissed without leave to reapply.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an order of possession in favour of the landlords.

The *Act* also states that incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the law. Since rent is payable on the last day of each month and the Notice is deemed to have been served on March 9, 2024, I find that the effective date of vacancy is changed to April 29, 2024. Since that date has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession, which may be filed for enforcement in the Supreme Court of British Columbia.

Since the tenancy is ending, and the tenant has not been successful with the application, I dismiss the balance of the tenant's application without leave to reapply.

Since the landlords have been partially successful with the application, the landlords are entitled to recover the \$100.00 filing fee from the tenant.

I grant a monetary order in favour of the landlords as against the tenant in the amount of \$100.00 for recovery of the filing fee. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, the tenant's application for more time than prescribed to dispute a notice to end the tenancy is allowed.

The balance of the tenant's application is hereby dismissed without leave to reapply.

The landlords' application for an order of possession for unpaid rent or utilities is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent is hereby dismissed with leave to reapply.

I hereby grant an order of possession in favour of the landlords effective on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: May 13, 2024

Residential Tenancy Branch