Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, CNC, LRE, OLC, FF

This hearing dealt with the Tenant's two applications for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice)
- an order cancelling a One Month Notice to End Tenancy for Cause (One Month Notice)
- an order suspending or setting 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
- recovery of the filing fee (2 applications)

Those listed on the cover page of this decision attended the hearing and, apart from the Landlord's legal counsel (Counsel), were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

In this case, the Tenant filed an application on June 12, 2024, to dispute the Two Month Notice. Subsequently, the Tenant was served a One Month Notice from the Landlord and the Tenant filed an application to dispute that Notice on July 6, 2024.

The applications were then administratively joined by the Residential Tenancy Branch (RTB) and scheduled to be heard together.

The Landlord confirmed receipt of the Tenant's two applications for dispute resolution, evidence, and notice of hearing (proceeding package) and the Tenant confirmed receipt of the Landlord's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Prior to the Two Month Notice in this dispute being served to the Tenant, the Landlord served the Tenant three other Two Month Notices, all for the same reason, and all three Notices have been cancelled by arbitrators in dispute resolution decisions.

The Landlord filed for judicial review of the Decision issued by another arbitrator on October 30, 2023, and the Supreme Court of British Columbia returned the file to the Residential Tenancy Branch (RTB) to be reconsidered. Presently, the matter has not been scheduled for reconsideration.

The Landlord filed for judicial review of the Decision by another arbitrator on May 15, 2024, and that appeal has not been set.

For these reasons, I find the same issues are either in the process of being scheduled for reconsideration by the RTB or currently on appeal with the Supreme Court.

Therefore, I find it procedurally appropriate to wait for the outcomes of the two in-progress previous applications as this present application would potentially make a total of three files before the RTB for a Notice issued for the same reason.

The Landlord's Counsel was advised of my decision, and although they disagreed, I elected to consider the merits of the One Month Notice, as that issue was separate and distinct from the now four, Two Month Notices to end the tenancy given to the Tenant since 2022.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

Is the Tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

Is the Tenant entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on March 1, 2008, for a monthly rent of $1250. The current monthly rent is $1476. The rental unit is in a condo in a strata controlled building.

Filed in evidence was the One Month Notice. The Notice was dated June 27, 2024, for an effective move-out date of July 31, 2024. The Tenant confirmed receipt of the Notice on July 2, 2024, by hand delivery.

Counsel submitted that the One Month Notice was originally served by email on June 28, 2024, and on July 2, 2024, a process server hand delivered the Notice, which was shown by their written statement filed in evidence.

The Tenant wrote in their application the following:

> *This is the landlord's fifth notice, the prior three two-month notices that the Residential Tenancy Branch (RTB) has nullified and canceled are: first (#-*******85), second (#-*******01), and third (#*******64). and the forth one (# *******98) hearing is scheduled for August 8th 2024. The pdf file "One_month_notice_Main-evidence-and_arguments_(*Tenant's name redacted* uploaded has all the details of my arguments and evidence for this notice that proves their notice is not valid and I request to be canceled.*

The reasons listed on the One Month Notice to end tenancy were:

- Tenant or a person on the property by the tenant put the landlord's property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Details of Dispute section on the Notice, is reproduced as follows:

> Details of the Event(s):
>
> The landlord conducted an inspection and noticed that locks to the front door of the rental unit were changed without the landlord or their agent's authorization (a secondary lock was added). On June 13, 2024, the landlord through their agent notified the tenant of this observation, advising the tenant that the addition of the secondary lock represented a breach of a material term of the tenancy agreement, and asked the tenant to remove the secondary lock no later than June 21, 2024, after which point it may be considered a breach of material term resulting in the issuance of a one month notice. On June 20, 2024, the tenant confirmed that the secondary lock had been added, but would not remove it.

Pursuant to Rule 6.6 and 7.20, the Landlord's Counsel proceeded first in the hearing to provide evidence in support of the Notice. In support of the causes alleged, Counsel submitted that the Landlord's son, CL, has moved into the residential property in another condo unit owned by the Landlord, passed by the rental unit and noticed a handle different than all the other handles in the building, which caused concern for the Landlord.

The Landlord submitted evidence of a May 22, 2024, letter sent to the Tenant, in which the Tenant was informed the Landlord noticed the Tenant installed a deadbolt to the door, and requested the Tenant to remove the additional deadbolt.

The Landlord submitted a letter June 13, 2024, noting that the Tenant consented to the Landlord's change of a deadbolt; however, when the Landlord's locksmith was going to change the lock that forms part of the handle to the same door, the Tenant requested that this lock not be changed.

In this letter to the Tenant, Counsel submitted that this additional door lock to the rental unit, for which the Landlord did not have a key, prevents the Landlord from accessing the rental unit during an emergency and the Landlord did not give permission for the lock change. Further, the Tenant was informed of a breach of the Act and the tenancy agreement, being a material term, and requested the Tenant remove the lock and re-install the original door handle to the rental unit front door, alternatively, if not, the Landlord requested the Tenant replace the current lock with one of a like kind and quality to the original. The Tenant was given a deadline of no later than June 21, 2024, to ensure the handle with the door lock installed by the Tenant had been replaced. The Tenant was informed that failure to comply would result in the Tenant being given a one month notice to end tenancy for cause.

Counsel submitted that to date, the Tenant has refused to change the door handle lock and the Landlord still does not have access to the rental unit.

In response, the Tenant argued that they a received the One Month Notice on July 2, 2024, and because the effective move-out date was July 31, 2024, which did not allow a full month's notice, the Notice should be cancelled.

The Tenant agreed they put a secondary lock on their door for security reasons due to recent break-ins and their public service role. The Tenant did not clarify if the break-ins were to their rental unit. The Tenant submitted when the Landlord changed the deadbolt, the Tenant was provided with just one key; however, they need an extra key for their roommate, which they have had from day one.

The Tenant submitted that they tried to resolve the matter with the Landlord prior to June 21, 2024. The Tenant referred to their letter by email of June 20, 2024, to Counsel, in which the Tenant stated that they "confirmed with the strata manager that unit keys are not kept on file. In emergencies, a professional locksmith is engaged, with costs borne by the tenant or owner". Further, the Tenant stated in the letter they consulted with a neighbor, a strata council member, who informed the Tenant that, "it is common practice for residents to entrust a spare key to a neighbor for emergencies, which is recorded by the strata manager to prevent charges for a forced entry". Further in this letter, the Tenant offered the Landlord these two options, stating they would cover the costs of emergency access to the unit, or give a key to a neighbour.

The Tenant said the Landlord never responded to their request.

The Tenant stated if the key was still a concern with the Landlord, they could produce the key within one hour.

The Tenant provided a written argument that questioned the validity of the One Month Notice, due to the constant attempts by the Landlord to end their tenancy, all of which have been unsuccessful. The Tenant argued that this was just the latest, unjustified attempt to end their tenancy, and that as they have had roommates throughout the tenancy, the request by the Landlord was not for a valid reason. The Tenant submitted that the original agents of the Landlord allowed them to have roommates and there was never an issue.

Counsel said the Landlord's response was contained in their June 27, 2024, letter to the Tenant, attaching the One Month Notice.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Although a significant portion of evidence from both parties was either historical in nature regarding past disputes or relating to the Tenant's applications for cancellation of the current Two Month Notice and prior Two Month Notices, I have focused on the relevant evidence relating directly to the One Month Notice.

Section 47(1)(h) of the Act authorizes a landlord to end a tenancy if the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under section 31(3) of the Act, a tenant must not change a lock **or other means that gives access** to the tenant's rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Where a Notice to End a Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Tenancy Policy Guideline 8 provides information regarding requirements for the Landlord. Prior to serving a tenant with a One Month Notice, the Landlord must first let the tenant know in writing of the alleged breach and give them a reasonable opportunity to fix the problem. The written notice of the alleged breach should inform the party of the following:

- there is a problem;
- they believe the problem is a breach of a material term of the tenancy agreement;
- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and

- if the problem is not fixed by the deadline, the party will serve a notice to end the tenancy.

If, in this case, the tenant does not fix the problem by the deadline, the landlord alleging the breach can serve a Notice to End Tenancy for Cause for breach of a material term of the tenancy agreement.

In this case, the clear evidence submitted by both parties is that the Landlord gave the Tenant a letter dated June 13, 2024, describing that the Tenant appeared to have added a secondary lock, and as the Tenant failed to give the Landlord a key or had the Landlord's written permission, the Tenant has denied the Landlord means of access to the rental unit. The letter described the additional lock addition was in breach of term 12 in the written tenancy agreement and of the Act. The letter gave the Tenant a deadline of June 21, 2024, to either remove the lock and re-install the original handle or replace the door handle installed by the Tenant with one of a like kind and quality to the original. The letter informed the Tenant that their failure to comply would result in the Landlord giving the Tenant a one month notice for cause.

I find the Tenant has breached a term of the tenancy agreement, specifically term 12 of the tenancy agreement which is on the standard RTB form, as the Tenant added a secondary door lock and prevented the Landlord from having a means of access to the rental unit. As this breach is also a breach of the Act, I find the term to be material, as it is a landlord's right under the Act to have means of access to enter the rental unit if an emergency exists and the entry is necessary to protect life or property.

Further, I find the Tenant was given a reasonable amount of time, more than one week, to correct the breach. Instead of spending the week complying with the Landlord's written request, the Tenant spent the week investigating alternative ways with the strata manager to avoid complying with the request of giving the Landlord means of access or removing the lock. The Tenant spoke with strata members how one could access a unit in time of emergency, finding out that someone could simply break the lock or a neighbour could have a key.

The undisputed evidence is that through the date of the hearing, the Tenant has done neither, and the Landlord continues to have no means of access to the rental unit because of the secondary lock.

I reject the Tenant's argument they should be excused from complying with the Landlord's request because the Landlord never answered their response letter of June 20, 2024, inquiring if the Landlord giving the Landlord other means of access was sufficient. The Landlord had already given their breach letter with specific instructions. I do not find the Landlord's letter gave the Tenant the impression that they could negotiate a different outcome. For this reason, I give the Tenant's June 20, 2024, emailed response little weight.

If the Tenant believed they should be allowed to legally add another lock, or otherwise change the means of access to the rental unit, the Tenant ought to have filed an application for dispute resolution with the RTB seeking such relief, which they did not.

Given the above, I find the Landlord has submitted sufficient evidence to prove on a balance of probabilities that the Tenant has breached a material term of the tenancy agreement, was given written notice of the breach and given a reasonable time to correct the breach, informed their failure to do so would result in a one month notice to end tenancy for cause, and has not complied, even through the date of the hearing.

As I found the Landlord submitted sufficient evidence to support one reason, or cause, listed on the Notice, I find it unnecessary to consider the other reason listed.

For this reason, I **dismiss** the Tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice dated June 27, 2024 valid, supported by the Landlord's evidence, and therefore, enforceable. I therefore uphold the Notice.

The Tenant stated they did not receive the Notice until July 2, 2024, and therefore, as they were not given one clear month's notice, the Notice is not valid. Under the Act, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Therefore, the effective, move-out date in this case is changed to August 31, 2024.

Under Section 55(1)(b) of the Act, I grant the Landlord an order of possession of the rental unit. Given the length of the tenancy, 16 years, I find it reasonable to extend the tenancy to September 30, 2024. I therefore grant the Landlord an order of possession of the rental unit effective at **1:00 pm on September 30, 2024**.

Should the Tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The Tenant is informed that costs of such enforcement to remove the Tenant, such as **bailiff and court costs**, are recoverable from the Tenant.

As I have dismissed the Tenant's application seeking cancellation of the One Month Notice, I dismiss without leave to reapply the Tenant's request for an order suspending or setting conditions on the landlord's right to enter the rental unit and an order for the Landlord's compliance with the Act, as the tenancy is ending.

I dismiss the Tenant's request to recover the filing fee, as their application is dismissed.

Two Month Notice

Although the parties and Counsel were informed that I would adjourn the matter of the Tenant's application for cancellation of the Two Month Notice to another date, this was prior to a decision being made on the Tenant's application for cancellation of the One Month Notice. I did not know the outcome of that application at the beginning of the hearing. I find that matter is now moot, as I have granted an order of possession of the rental unit based on the One Month Notice. I do not make any findings to the merits of the Two Month Notice, or the Tenant's application and evidence, as it is no longer necessary.

For this reason, I decline now to proceed on the Tenant's application for cancellation of the Two Month Notice and their request for an order suspending or setting conditions on the landlord's right to enter the rental unit, which was repeated on the application for cancellation of the One Month Notice. The Tenant's primary application will not be adjourned.

Alternatively, I decline to consider the Two Month Notice as I am unable to determine if this dispute is substantially related to a matter that is before the Supreme Court, in which case, the director or delegate must not resolve the dispute.

I also dismiss the Tenant's application for recovery of the filing fee for their first application, without leave to reapply. The Tenant could have amended their original

application to include the request dealing with the One Month Notice, instead of incurring a second filing fee.

Conclusion

The Tenant's secondary application for cancellation of the One Month Notice is dismissed, without leave to reapply, as I find the Landlord submitted sufficient evidence to uphold the Notice.

The Landlord is granted an order of possession of the rental unit, effective on September 30, 2024, at 1:00 pm.

The Tenant's primary application seeking cancellation of the Two Month Notice is declined, as the matter of whether the tenancy ends or continues is now moot as an order of possession has been granted to the Landlord.

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: August 17, 2024

Residential Tenancy Branch