



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KST Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated October 21, 2020 ("One Month Notice"); and an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated October 9, 2020 ("10 Day Notice").

The Tenant and an agent for the Landlord, W.J. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses, one for the Landlord, W.J. Jr. ("Caretaker"), and one for the Tenant, B.M. ("Witness"), were also present and provided affirmed testimony. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said she had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that she had not submitted any documentary evidence to the RTB or to the Landlord for this proceeding.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me of the corporate Landlord's name, therefore, I amended the Applicant's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2019, with a monthly rent of \$700.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$350.00, and no pet damage deposit.

The Landlord submitted a photograph of the 10 Day Notice taped to the rental unit door on October 9, 2020, which was signed and dated October 9, 2020. The 10 Day Notice has the rental unit address, it has an effective vacancy date of October 22, 2020, and it was served on the grounds that the Tenant had not paid any rent in 2020, and owed arrears of \$7,000.00 at that point. The Agent said that the Tenant now owes \$9,800.00 in outstanding rent up to February 2, 2021.

The Landlord submitted a photograph of the One Month Notice taped to the rental unit door on October 21, 2020, which was signed and dated October 21, 2020. The One Month Notice has the rental unit address, it has an effective vacancy date that is automatically corrected to November 30, 2020 by section 53 of the Act. The One Month Notice was served on the grounds that the Tenant:

- is repeatedly late paying rent;
- allowed an unreasonable number of occupants in the unit;
- the 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; and
 - put the Landlord's property at significant risk; and

- the 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.

In the hearing, the Landlord said that he served the eviction notices, because of the Tenant's "...non-payment of rent and because of when [the Tenant] flooded the suite below hers. That flooding happened on September 29, 2020 – half the ceiling collapsed in the suite below."

In the hearing, when explaining the flood, the Tenant initially said:

...we were going to have a shower and a cartridge blew, and hot water was blown across the bathtub and was shooting hot water – spraying it out. It drained all the hot water in the whole building. We couldn't get it stopped. We couldn't get hold of [the Caretaker]. [The Caretaker] finally became available when he seen me dumping huge amounts of water out the balcony. The pressure was unreal. The shut-off is behind the tile underneath it. I had to help [the Caretaker] shut the water off, because he couldn't do it himself. It was spraying back; you couldn't get yourself down.

It started when we went in to have a shower and instead of turning on, the handle blew out and we were lucky that we weren't in front of it. The threads were worn. I sat there with the shower curtain holding off the spray.... [The Caretaker] said it had happened to three other tenants and they were hit in the head with the shower. It's old plumbing. The threads were worn....

The Caretaker said:

The tenant downstairs – my door was rung by Jeff – there was a major leak from [upstairs]. His wife saw nothing at 4 a.m. when she arrived home from work. Jeff followed me up the hallway and I was knocking [on the Tenant's door]... no response... I used a key to enter the suite for the water emergency to find the door blocked and them running to shut the taps off. [The Tenant] fell asleep as she was running a bath and she shut it off when we came in. Water was running for an hour and a half. The water was coming through the hallway.

There was no need for a plumber, because it was just the faucet that was on.

The Tenant said:

Our taps are still leaking to this day. I tried to deter it as much as I can, make sure the water didn't go off the side of the tubs. The caulking is all gone.

That incident was - I had a shower and the water constantly runs .. I woke up and they came in and they shut it off. I didn't hear anything about damage to downstairs. He came back five days later to talk to me about it. There was no emergency. The first flood was months before.

I woke up because I have a disability – I had a cramping situation, and the hot water soothes it. I had my shower turned off and I went back to sleep. I woke up to water running in the tub through the faucet, not the . . . I wasn't told of all the damage to downstairs until I got these pictures in this package. I was not told there was extensive damage. [The Caretaker] never came to my door and said . . . he never said I was going to be evicted over it. When he came up about a week later to check the carpet, he was totally nice and never said anything

When they entered – that was when they woke me up - and I found the water was running. I didn't have a bath or anything that night. I 100% know that I did not have a bath that night. When I'm in an emergency state I have to get into the shower right away to sooth my legs.

I also asked the Landlord about the 10 Day Notice, and why I should confirm that, rather than cancel it, as the Tenant has requested. The Landlord said that the 10 Day Notice was issued, because the Tenant was in arrears for rent from January through October 2020. He also said that the Tenant has not paid any rent for 14 months, as of the date of the hearing.

When I asked the Tenant if she had paid any rent in the last year, she said she paid for January through March 2020. She said she did not pay for the rest of the year, because of Covid problems. She said she paid cash and did not get receipts from the Landlord for these payments in the first quarter of the year.

I asked the Landlord if he had given the Tenant a repayment plan for the Covid-related arrears, and he said that the arrears are long-standing – since before Covid. He said he wasn't able to evict the Tenant during this time, but when she did not pay in September or October 2020, either, he had to take action.

The Landlord said:

Again, to reiterate on rent, she didn't pay in January, February, or March 2020, and we always give receipts. She has receipts for November and December 2019, and she would have had more receipts if she had paid the rent. That's pretty well about it. It's to the point that the Tenant's 14 months in arrears. We're not even concerned with the money, but about getting our suite back, and avoiding any further damage to the suite below, and including that suite.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As I noted in the hearing, I find that the Tenant has given two different explanations for what happened on September 29, 2020, when the bathtub in her rental unit overflowed. Initially, the Tenant said that she was going to take a shower and a mechanism in the faucet broke and sprayed hot water everywhere. However, after the Caretaker testified about having to enter the rental unit for the water emergency, suddenly the Tenant said that she woke up to the water running out of her tub. This internal inconsistency raises questions in my mind about the credibility of the Tenant's testimony regarding the flood. As a result, I find it more likely than not that it was the Tenant's negligence that caused the flood early on September 29, 2020. Accordingly, I find that the Tenant 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, and put the Landlord's property at significant risk.

In addition, the Landlord said that the Tenant is currently 14 months in rent arrears, to which the Tenant agreed that she is at least 11 months in rent arrears. The Tenant did not indicate what kind of problems she had, due to the Covid emergency, or why she did not pay rent for so long. Further, I found the Tenant's evidence about what caused the flood to be lacking in credibility, and I did not find any similar credibility issues with the Landlord's evidence or that of the Caretaker. As such, and given the inconsistent evidence between the Parties on whether the Landlord issued receipts for rent paid in cash, I find it more likely than not that the Tenant was not truthful about having paid rent in January, February, and March 2020. I find it more likely than not that the Landlord's evidence about the Tenant being 14 months in rent arrears at the time of the hearing is true.

As a result, I confirm both the One Month Notice and the 10 Day Notice, and I award the Landlord with an Order of Possession, effective two days after service on the Tenant,

given that the effective vacancy dates of both Notices have passed.

Conclusion

The Landlord is successful in his Application for an Order of Possession based on a One Month Notice and on a 10 Day Notice, as the Landlord proved on a balance of probabilities that the Tenant caused serious damage to the rental suite, as well as to the suite below, when she negligently caused a flood in the rental unit. Further, I also found that the Tenant is 14 months in arrears in rental payment to the Landlord, which is also grounds for the end of the tenancy in this set of circumstances.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant, given that both effective vacancy dates have passed. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 24, 2021

Residential Tenancy Branch