



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LAT, DRI, FFT, LRE (primary file);
DRI, CNR, FFT, CNC (secondary file)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to dispute a rental increase pursuant to section 41;
- Authorization for a lock change by the tenant pursuant to section 31;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to dispute a rental increase pursuant to section 41;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. It was clarified that no recording of the Arbitration was permitted.

Pursuant to section 63, the Arbitrator attempted to assist the parties during the hearing to reach a settlement. The tenant confirmed that he wanted to proceed with the hearing and for me to make a decision, rather than agree to a settlement with the landlord. The tenant was given ample time to make this decision. I answered all the tenant's questions regarding the settlement and hearing/Decision/Order procedures. The tenant was cautioned about the possible outcomes of my Decision repeatedly and chose to pursue a hearing of this matter.

The landlord withdrew the 10 Day Notice to End Tenancy.

Preliminary Issue – Claims

The tenant applied for multiple remedies under the *Act* some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all the claims on the tenants' application except for the following:

- Cancellation of the One Month Notice;
- Cancellation of a second One Month Notice;
- Reimbursement of the filing fee on each application.

Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notices issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The landlord requested an Order of Possession on two days' notice to the tenant.

Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of the first One Month Notice;
- Reimbursement of the filing fee.

Is the tenant entitled to:

- Cancellation of the second One Month Notice;
- Reimbursement of the filing fee.

Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant and landlord submitted substantial documentary evidence to support lengthy and often contradictory testimony in a hearing that lasted 85 minutes. The landlord submitted many written witness statements. Both parties submitted written submissions. Not all the evidence is referred to in my Decision. I refer to only key, relevant, and admissible facts and findings.

This hearing involved an application by a tenant filed on February 1, 2021 to cancel the One Month Notice issued by the landlord January 26, 2021 ("the first One Month

Notice”). The tenant acknowledged receipt. The Notice’s effective date was February 28, 2021.

The hearing also involved an application by the tenant to cancel a second One Month Notice (“the second One Month Notice”) dated February 26, 2021. The tenant acknowledged receipt. The Notice’s effective date was April 1, 2021. The cause in the Notice is “breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so”. The Notice stated that the tenant had two dogs in the unit in contravention of the strata rules and the landlord had been informed that the strata would be imposing weekly fines.

The tenant wanted the tenancy to continue. The landlord requested an immediate Order of Possession.

Background

The parties agreed that they were once friends. During their friendship, they entered into a verbal tenancy agreement which began March 1, 2019 for a 1-bedroom condo owned by the landlord. The tenant stated that rent is currently \$1,000.00 monthly; the landlord testified that rent is now \$1,100.00 monthly.

At the time the tenancy began, the parties had imprecise plans that the tenant may buy the unit one day. However, the personal relations between the parties soured; the tenant testified that the landlord invited other participants to a sporting event to which he, the tenant, took offence.

The tenant’s purchase plans were not carried out. The landlord then offered the unit for sale on the market and a sale has been agreed to with a third party on condition of vacant possession. Another hearing which is referenced on the first page has been scheduled with respect to the upcoming sale and an associated RTB notice to the tenant to vacate pursuant to the terms of the sale.

The first One Month Notice

The first One Month Notice is in the standard RTB form. A copy was submitted. The Notice was issued January 26, 2021 and the tenant acknowledged receipt. The Notice had an effective date of February 28, 2021. The reasons for the issuance of the Notice are stated to be:

- The tenant or a person permitted on the property by the tenant has

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant knowingly gave false information to prospective tenant or purchase of the rental unit/site or property park.

In the Notice, the landlord stated as follows as the reasons for issuance of the notice which were confirmed in his testimony:

“Significantly interfered” – between Jan. 9-12, the tenant sent unwelcome messages directly to my wife, portraying me as an unfit (“toxic”) husband. The interference is exacerbated by the fact that she was in the 8th month of our 1st pregnancy, and my tenant was aware of her condition.

“False information”: this month, prospective buyers found a 6-page notice posted in the unit, signed by the tenant. I received photos of it from my agent, on Jan. 22. The tenant’s notice states that he decided not to buy the unit due to “a myriad of issues”. In fact, I withdrew the offer of a private sale. He claims I “personally approved” elected costs he sought to have reimbursed by the strata. No such commitments were made.

He relays false financial information regarding special levies as well as a claim that the strata “cancelled the cleaners” during COVID-19. Speculative and suggestive comments like these abound, all depicting the building as a “neglected” “dangerous” place to live and an unwise investment”.

The landlord testified as to the circumstances which led to the issuance of the Notice. His testimony was confirmed by his written submissions and several witness statements. The landlord primarily relied upon the first ground that is, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

In support of his claim, the landlord submitted substantial evidence. Reference to four witness statements submitted as evidence by the landlord follows.

CB, the landlord’s spouse, provided a written statement and copies of correspondence with the tenant. CB’s statement stated in part as follows:

- *I received a text message from [tenant], on 9 January 2021, attacking my husband’s character and claiming he was doing so in my best interest due to “toxic culture being perpetuated” without my knowledge.*

- ... he [the tenant] requested my email address...
- ... His [the tenant's] recent message were sent to me within my final month of pregnancy. They were unwelcome and showed a total lack of consideration for my condition or for the adverse effects emotional stress can have on pregnant women and their unborn children....
- ...[the tenant] stated that [the landlord] "has been keeping you in the dark and manipulating facts since the wedding at least" and that [the tenant] was "concerned for your (my) future"...
- Witnessing [the landlord] experience emotional attacks and endure [the tenant's] simultaneous refusal to speak to him on the phone or in person to communicate in a constructive way has been taxing to say the least. [the landlord's] time and energy has been thoughtlessly wasted with confrontations while he has been simultaneously working towards completing his PHD program and preparing to become a father for the first time. These dealings have impacted our family, both emotionally and financially, in a negative way.

In response to the landlord's assertion that the tenant had *significantly interfered with or unreasonably disturbed* the landlord and his spouse, the tenant explained that the landlord had "crossed boundaries" during the tenancy and was "unprofessional". The tenant testified that the relationship between the landlord and tenant had "descended into manipulation and slander" on part of the landlord. The tenant denied the validity of CB's "narrative" and replied that his contact with her was motivated by a genuine concern for her well being and arose out of their friendship. He denied any ulterior, underhanded, or unkind motive. He maintained that he acted with integrity, honesty, and good motives. He wanted to involve the landlord's wife, who had also been a friend, to inform her of the landlord's negative actions with respect to the tenancy.

The landlord submitted a copy of a witness statement from KG, a realtor, stating that she was the landlord's agent with respect to the sale of the unit. KG attached copies of many texts in support of her statements. KG stated in part that the tenant changed the locks without consent. KG stated that the tenant "made "repeated attempts to interfere with the sales process". The tenant posted notices to prospective buyers and attempted to refuse prospective buyer's access to the unit despite proper notice. KG stated, "I know that [the tenant's] actions had a negative impact on interest in the unit

and diminished its value in the eyes of prospective buyers.”

The landlord testified that the tenant’s actions resulted in a lower than expected selling price for the unit.

The tenant acknowledged that he posted a notice to prospective buyers without the landlord’s consent. However, he stated it was solely to provide “transparency” and his motive was helpfulness to prospective purchasers.

The tenant submitted the written statement of AH, strata president of the building. She stated in part as follows:

- *I have been an owner at the property since 2012. Never in that time have I encountered a tenant that managed to cause so much trouble and additional work for the Strata Council or for our strata management company [name] as has [the tenant] between 2020 and 2021.*
- *I have reviewed the evidence document that both [parties] have prepared for the Residential Tenancy Branch (“RTB”) dispute resolution process. In my opinion, [the tenant’s] evidence is consistent with the facts, while [the tenant] states several false claims*

The strata management company representative KL submitted a witness statement dated April 13, 2021, which stated in part as follows:

- *While managing the strata council for [unit’s address] on behalf of the [name] Management company, in 2020 and 2021, I have received an unusual number of communications from the current occupant of unit 201, [the tenant]. This tenant has been frequently hostile and rude in his dealings with me...*
- *In January of 2020, [the landlord] forwarded to our offices images of notices left in [the unit] when real estate showings began there. These include a number of false and, in my view, malicious statements about the strata and our company. These include:*
 - *1) That the cleaners of the property were cancelled by the strata council during Covid-19. In fact, [the management company] paid [name] for his janitorial services throughout 2020 and into 2021. See the following financial report showing invoices received and payments issued.*
 - *2) [The tenant’s] notices in the unit falsely claim that a second*

management company was hired in recent years, due to mismanagement of strata funds by our company. ... we take our fiduciary responsibilities seriously. We also take our reputation seriously and so do not at all appreciate [the tenant's] misleading and baseless accusations in this matter.

- *[the tenant] has recently introduced a number of issues that the landlord, the strata council, and our office have struggled to resolve, in light of his personal communication style that is—in my view—entitled, disrespectful, and erratic. He has continually stored personal items in common areas, despite repeated attempts to have him comply with strata rules. He has refused to comply with rules governing pets, and our offices have issued multiple fines as a result. I have personally attempted to deal fairly with [the tenant] to resolve specific issues, yet communications have proved unproductive, because he has responded to reasonable messages unreasonably and goes so far as to hang up during our phone conversations.*
- *I have worked with hundreds of properties occupied by thousands of tenants in my career. In that time, I have encountered only a handful of tenants whose behaviour matches the egregious communications and comportment of [the tenant]. He has frequently laid claim to entitlements he does not possess and, just as often, denied the legal rights of the building's strata council and our offices.*

In response, the tenant justified his actions as based on factual truth and reasonable behaviour. He submitted pictures which he said were of the hallway in the building and which appeared to need cleaning. In his written submissions, the tenant referred to the failure of the strata to provide adequate seating for the front porch and the tenant making due "with discarded furniture for over a year". The tenant repeated his belief the cleaners were cancelled.

In his written submissions, the tenant stated in part as follows:

- *[the landlord] he has taken a tone of "lordship" over our relationship in personal, social and also housing aspects and dealings. I became confused at first and lost work to his aggressive shifts and threats on my home space and eventually had to stand up to him and attempt to honor my rights as a renter (and a human) to curb his bullying personality and set things straight. At this, he's threatened and vowed to make life difficult for me in this and any avenue where our lives meet.*

- *[An RTB Information Officer] expressed to me that it was common for homeowners to display valid information for prospective buyers being that they wouldn't be there to orate the details in person and that as long as said information was true there would be no course for action against me. I was careful to include only what I knew for certain both from conversation with the unit owner (landlord) and attained from strata documents given to me by [landlord] when we were engaged in discussing a private sale of the unit. And to be clear, the building is neglected and in certain areas very dangerous. I've expressed this in writing to the unit owner and strat [sic] as well. But alas, the unit owner wants me out, out of spite. I feel that's unfair and have presented what I can to defend myself and hopefully stay in my safe space (rented home) for awhile longer*

The landlord testified that he repeatedly asked the tenant to stop the above behaviour. The landlord submitted considerable testimony and supporting documents showing his efforts to counter the tenant's actions and to convince him to cease and move out. The landlord said the cumulative effect of the tenant's actions was to *significantly interfered with or unreasonably disturbed* him for which the Notice was properly issued. He asked for an Order of Possession effective as soon as possible.

The Second Notice

Because of my following findings, I do not address the background and positions with respect to the second Notice which I dismiss with leave to reapply.

Analysis

Section 47 of the Act allows a landlord to end a tenancy on one month's notice for certain reasons.

Section 47(1)(d) of the Act states in part:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

- (d) the tenant or a person permitted on the residential property by the tenant has*
 - (i) significantly interfered with or unreasonably disturbed another occupant or the*

landlord of the residential property,...

Pursuant to section 88 of the *Act*, and based on the submissions of both parties, the landlord issued the first One Month Notice dated January 26, 2021; the tenant acknowledged service and filed an application to dispute on February 1, 2021 within the time allowed.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice.

In reaching my Decision, I have considered the documentary evidence and the testimony of each of the participants. Given the contradictory testimony and positions of the parties, I must turn to a determination of credibility.

Considered in the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, calm and forthright. I accept their testimony as believable as it was supported by well-organized and complete documentary evidence, including first-hand accounts from many witnesses. The landlord provided consistent, logical, credible testimony.

In considering the tenant's submissions and evidence, I concluded that the tenant engaged in deliberate and calculated actions with the motive of retaliation for a failed friendship, which the tenant believed was caused by the landlord, and for the failure of the parties to come to an agreement about the sale of the unit.

Based on the foregoing, I prefer the landlord's evidence to the tenant's version of events. For these reasons, where the evidence of the parties' conflicts, I prefer the landlord's version as the more credible and reliable.

Based on the parties' uncontradicted testimony and a review of the first One Month Notice, I find the Notice complied with section 52 of the *Act*.

I accept the landlord's testimony that the tenant inappropriately contacted the landlord's spouse and distressed her. I find the tenant improperly and deliberately disrupted the landlord's attempts to sell the unit, such as by posting for prospective viewers disparaging and unflattering material about the unit. I find the tenant engaged the strata management in conflict and negative discussions unfairly and unnecessarily, to make things difficult for the landlord.

I find that the landlord informed the tenant many times that he must cease behaviour found objectionable and offensive by him, his spouse, and occupants of the building. I find the landlord has provided sufficient written warnings to the tenant by providing him with considerable detailed texts and correspondence requesting that he cease the behaviour the landlord found offensive.

The tenant acknowledged he knew that the landlord intended to issue the Notice if the complaints about his behaviour did not stop. The landlord has issued four Notices, two of which relate to cause and are the subject of this proceeding. I find the tenant was aware of the landlord's complaints and the nature of the behaviour the landlord, his spouse, and other occupants, particularly the management, found objectionable. I find the tenant was cognisant of why the landlord was seeking to end the tenancy.

I find the tenant has engaged in uncooperative and disruptive behaviour on the many occasions described by the landlord, the evidence of which I accept, causing distress and disturbance to the landlord meeting the standard of proof under this section. Considering the totality of the evidence, I find that the landlord has met the burden of proof on a balance of probabilities that the tenant significantly interfered with or unreasonably disturbed the landlord through the cumulative effect of his actions; as a result, I find the landlord has established grounds for the issuance of the first Notice under section 47(1)(d)(i).

Because of my findings, I do not find it necessary to address the second ground for the issuance of the first Notice or the grounds under the second Notice.

I therefore dismiss the tenant's application to cancel the first Notice and I uphold the first Notice.

Referenced earlier, section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Based on my decision to dismiss the tenant's application and my finding that the landlord's first Notice complies with the *Act*, I find that the landlord is therefore entitled to an Order of Possession effective two days after service. I uphold the first Notice as properly issued and enforceable.

I do not address the second Notice as I find the tenancy ends as directed pursuant to the first Notice. The application to cancel the second Notice is dismissed with leave to reapply.

As the tenant has not been successful in his application, the tenant is not awarded reimbursement of the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be enforced as an order of the Supreme 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 *Residential Tenancy Act*.

Dated: May 3, 2021

Residential Tenancy Branch