



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, CNC, LAT, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated March 31, 2021 ("1 Month Notice"), pursuant to section 47;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 57 minutes.

The landlord confirmed that she owns the rental unit. The tenant confirmed that her advocate had permission to speak on her behalf at this hearing.

The landlord intended to call two witnesses at the outset of this hearing: her father and a plumber. The landlord voluntarily chose not to call her two witnesses at the end of this hearing, despite being given the opportunity to do so. She stated that their testimony was not required because she already testified about all of the relevant information at this hearing. The landlord spoke for the majority of the hearing time, as compared to the tenant.

I cautioned the landlord that if she voluntarily chose not to call her two witnesses at this hearing, she could not claim that she did not have an opportunity to do so. I informed her that she could not add evidence or testimony from these two witnesses after the hearing was over, even if she was unsuccessful in this application. The landlord confirmed her understanding of and agreement to same.

At the outset of this hearing, I notified both parties that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by any party. The landlord, the tenant, and the tenant's advocate all affirmed under oath that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they did not want to settle this application, they wanted to proceed with the hearing, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The landlord was in receipt of the tenant's application for dispute resolution hearing package and the tenant was in receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on April 1, 2021. The landlord confirmed that the notice was served to the tenant on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on April 1, 2021.

At the outset of this hearing, the tenant's advocate confirmed that the tenant did not want to pursue any of the claims in her application, except to cancel the 1 Month Notice and recover the \$100.00 filing fee. She stated that the tenant would not pursue these same claims in the future. I informed both parties that these portions of the tenant's application were dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the name of the male tenant ZB as a tenant-respondent. The tenant stated that he is not a tenant and was not named on the parties' written tenancy agreement. Both parties consented to this amendment during the hearing.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2016. Monthly rent in the current amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is the basement of a house.

Both parties agreed that the landlord issued the 1 Month Notice, with an effective move-out date of April 30, 2021, for the following reason:

- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*

The landlord testified regarding the following facts. The tenant caused damage to the property and did not notify the landlord. There is a lack of cleanliness inside the rental unit, where items are cluttered, and the landlord submitted photographs of same. The tenant has abused the parking at the property by parking two uninsured vehicles at the rental unit, and she only removed one vehicle when the landlord issued the 1 Month Notice to her. Parking is not extraordinary damage to the rental unit, but the landlord did not know what other reason to check off on the 1 Month Notice for this issue. In July 2020, when the landlord came to the rental unit, she noticed a "foul smoke smell." The tenant told her that there was a fire several months prior and she would clean it up. The tenant did not notify the landlord about the fire when it happened. The landlord completed an inspection of the rental unit one month later and nothing was cleaned. The landlord submitted photographs taken on March 29, 2021, which shows the same condition of the rental unit as in August 2020. There was smoke damage, the walls

were black, the landlord sent the tenant information on how to clean the damage, and the tenant was adamant to attend any inspections by the landlord. In March 2021, when the landlord inspected the property again, the paint was cleaned up, but the rental unit was still cluttered.

The landlord stated the following facts. On March 14, 2021, the landlord was told by another tenant at the rental property, that water was leaking into the other tenant's bathroom. The landlord could hear water through the wall. The landlord knocked on the door of the tenant's rental unit, but the tenant's partner would not let her inside. There was a padlock on the outside of the door and the landlord could not open the door with her key. The landlord drove to the tenant's workplace and was told her partner might let the landlord in. The tenant let the landlord into the rental unit on the third time. The landlord saw that the showerhead in the bathroom was broken, hot water was pouring out of the faucet, and the tiles were falling off. The landlord turned off the water. The tenant damaged the shower. The landlord's father put a cap in the showerhead to seal off the showerhead and stop the water from running. The landlord's plumber came to inspect the bathroom in June 2021 but felt uncomfortable because the tenant wanted to film him and would not give him space. The plumber did not provide a written estimate to the landlord. The tenant also caused a fire in 2018, as per the landlord's evidence. From January 1 to March 31, 2021, there was increased water consumption and costs, which almost doubled compared to the year before. The landlord provided copies of the utility bills and a summary of the usage in her evidence. The highest consumption of water was from March 9 to April 9, 2021. The utility bills are the total for the entire house, which has three units and eight total people in the house, of which the tenant and her partner are two of the eight people.

The tenant testified regarding the following facts. The tenant told the landlord that the people upstairs in the house were using laundry everyday, as late as 3:00 a.m. During the water leak incident, the water was dripping out of the showerhead and down the drain. The tenant thought the knob was loose, so she did not think it was an issue to report to the landlord. The landlord's plumber spent four minutes inside the rental unit and left. There was no water damage in the bathroom. The tenant did not do anything to damage the shower or the water faucet. The landlord does not provide 24 hours written notice to inspect the rental unit. The landlord sends text messages to the tenant and the tenant lets the landlord in whenever she asks. The lock to the door was broken two years ago, so the tenant put a padlock to secure her items inside the rental unit. She did not report the issue to the landlord because she did not know the landlord was supposed to fix the lock. The tenant gave the landlord the code to open the padlock and provided a copy of the text message. The tenant submitted photographs taken in

July 2021, which do not show extraordinary damage to the rental unit. The landlord did not repair the shower, it was only “capped off” as per the landlord’s testimony. No notices of inspection or warning letters were provided by the landlord to the tenant regarding cleanliness at the rental unit.

The landlord stated the following facts in response to the tenant’s testimony. She did not receive the tenant’s text message on July 12 with the padlock code because she may not have had cell phone reception, as she was out of town at the time. The tenant said multiple times that the landlord could not access the rental unit. The landlord agrees that she did not provide written notice to the tenant of inspections because she communicates verbally or by text messages with the tenant. The water from the showerhead was pouring, not dripping, and the landlord saw the hot steam. This caused the broken tiles in the bathroom.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on April 1, 2021 and filed her application to dispute it on April 6, 2021. Accordingly, I find that the tenant’s application was filed within the ten-day time limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord provided insufficient evidence to show that the tenant or a person permitted on the property by the tenant caused extraordinary damage to the unit or property.

During the hearing, I informed the landlord that I do not find parking issues to be extraordinary damage to the rental unit or property. The landlord agreed that the parking issues did not qualify as same.

I do not find the water leak issue on March 14, 2021, to be *extraordinary* damage to the rental unit or property. The landlord agreed that the showerhead was not repaired but only “capped” by her father. The landlord’s plumber did not inspect the bathroom until June 2021, months after the incident occurred in March 2021. The landlord did not complete any repairs to the bathroom. The landlord waited two weeks after that date, until April 1, 2021, to serve a 1 Month Notice to the tenant. This was not an urgent issue or extraordinary to the landlord, based on her actions. I find that the water leak

was not *extraordinary* damage to the rental unit, as no bathroom repairs were even completed, and the landlord waited weeks and months to take action. The landlord did not indicate how this damage was *extraordinary*, rather than ordinary.

I do not find cleanliness issues, as per the landlord's photographs, to be *extraordinary* damage to the rental unit. The landlord said that these issues dated back to August 2020, almost one year prior to this hearing date in July 2021. The landlord agreed that she did not issue any written inspection notices or warning letters to the tenant regarding the cleanliness issues. Therefore, I find that the above events are too far removed in the past, to be considered a pattern of behaviour by the tenant or *extraordinary* damage. If they were, the landlord would not have waited almost a year to issue a notice to end tenancy to the tenant. The landlord did not indicate how this damage was *extraordinary*, rather than ordinary.

The landlord referred to fire events dating back to 2018 and July 2020. These are one to three years prior to this hearing date on July 27, 2021. The landlord agreed that the tenant rectified the painting and wall issues. I find that the above events are too far removed in the past, to be considered a pattern of behaviour by the tenant or *extraordinary* damage. If they were, the landlord would not have waited years to issue a notice to end tenancy to the tenant. The landlord did not indicate how this damage was *extraordinary*, rather than ordinary.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated March 31, 2021, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the Act.

As the tenant was only partially successful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated March 31, 2021, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the Act.

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

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: July 27, 2021

Residential Tenancy Branch