Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated May 11, 2021 (1 Month Notice) and to recover the cost of the filing fee.

The tenant, an advocate for the tenant, IM (advocate), two agents for the landlord, LR and RM (agents) and a witness for the landlord, PM (witness) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The parties confirmed that they received evidence packages from each other and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an

investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenancy began on December 15, 2006. The parties agreed that the tenant's current monthly rent contribution is $574.00 per month and is due on the first day of each month.

The tenant affirmed that they were unsure when the received the 1 Month Notice. The Month Notice is dated May 11, 2021 and the tenant disputed the 1 Month Notice on May 20, 2021, which is within the permitted 10-day timeline under section 47 of the Act. The landlord listed a total of 4 causes on the 1 Month Notice as follows:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In support of the 1 Month Notice, the following Details of Cause(s) are listed:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

The tenant is allowing her son to live with her against section 14 her tenancy agreement.
The tenant's son pulled all the notices off all the walls and notice boards and threw the news papers on the floor creating a trip hazard for the seniors in the building who are mobility challenged.
Removed the recycle box to carry his possessions, the box has not been returned.
His behaviour has caused the caretaker unnecessary extra work.

Tenant was sent a warning letter on March 10th, 2021.

Regarding cause 1 listed above, the landlord stated that the incident date was May 9, 2021. Although the agents stated that a video file was provided to a Service BC office, the parties were advised during the hearing that there was no video file uploaded for my consideration into the Dispute Management System (DMS) and instead, the parties were advised that I would be considering the screenshots from the video surveillance system in the alternative.

In the primary screenshot, a male is shown holding a blue recycling box (blue box) with papers strewn across the lobby. The tenant stated that it was her son and that he was "very angry when he left and decided to take it out on the lobby." The tenant was asked why, and the tenant stated that it was Mother's Day and that they were tired and when they advised their son that they would like to wait until the following day to continue their chat, their son became angry. There is no dispute about the tenant's son entering the lobby, tearing down papers from the walls and scattering them on the floor of the lobby and that the tenant's son took the blue box from the building without returning it. The tenant testified that they replaced the blue box for the landlord and the agent did not dispute that assertion by the tenant during the hearing. The tenant also stated that they went down to the lobby and put all but 4 or 5 of the flyers back on the walls and became too tired and planned on returning the next morning to finish the job. The tenant stated that when they returned the next morning to put the remaining 4 or 5 flyers back on the wall, the job was already done, and nothing was on the floor. The agents did not dispute this testimony of the tenant.

Regarding cause 2 listed above, the landlord called witness PM (witness) who was affirmed. For ease of reference, I have used Q to represent question and A to represent answer:

Landlord

Q: Tell me about the son of the tenant.
A: After getting groceries I had picked up a cell phone and tossed it over the ledge and there was a guy about 20 feet away who said “What did you do with my phone?” and took my keys and threw them away. The next day I went to get the groceries that he took and the son walked up to me outside and knocked me out of my scooter onto the ground and he said he “was going to make my life miserable.” The first incident happened right outside of the building and the next day (after I was pushed out of my scooter) I saw him and opened the door for him and he said “how come you opened the door for me?” as he was surprised that I was being nice to him.

Advocate

Q: You said he was downstairs visiting someone?
A: In front of the door, yes.

Q: Second incident?
A: He knocked me out of my scooter.

Q: And was this off the property?
A: Yes at the Fairway market.

Q: Can you describe the phone you picked up?
A: Yes, it was an Android phone with a cracked screen.

Q: Where did you toss the phone?
A: It was in front of the main entrance…I threw it in the garden below.

Q: So you saw the phone on the raised walkway?
A: Yes.

Q: And you threw the phone over the balcony?
A: Yes.

Q: And the man accosted you?

A: Yes, I think he was trying to shake me down for $100.00 by saying I broke his phone.

Q: And the man has multiple friends in the building he visits?
A: Yes.

(Witness excused)

The landlord had nothing further to present at this time and as a result, the tenant and the advocate provided their response. The advocate stated that the landlord has not proven that the tenant's son was invited by the tenant on the day that the witness was accosted and stated that the witness confirmed that he visits several friends in the building. The advocate stated that it is also moot as the tenant's son has not returned since the lobby incident on May 9, 2021 by request of the tenant. The agents confirmed that the tenant's son has not been seen in the building since May 9, 2021.

The advocate stated regarding cause 4, breach of a material term, that the tenant is arguing that the 14-day guest policy is not enforceable and referred to a previous decision included in the tenant's evidence package, of which several sections of that decision were quoted as follows:

> The advocate submitted a comparison to demonstrate what the advocate stated was the absurdity of the 14-day guest policy by comparing that inmates in federal Canadian prisons currently enjoy 72 hours of private overnight visitors every 2 month or 18 day
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> per year, which is 4 more days of overnight visits than the tenants in this matter are permitted to enjoy in their tenancies. The advocate concedes that while the tenants are not inmates and can move, it is absurd to imagine that tenants could be held to more restrictive rules than federal inmates.
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> The advocate further writes that a landlord can therefore only restrict the guests of a tenant if it is reasonable to do so, in a specific situation and argues that in the matter before me, the 14-day guest policy was applied sweepingly and without any reason specific to the tenants in this matter. The advocate submits that the tenants are required to sign the tenancy agreement and agree to the 14-day guest policy and the advocate submits that under section 5 of the Act, the landlord may not avoid or contract out of the

Act or the regulations and that any attempt to avoid or contract out of the Act or regulations is of no effect given that section 5 of the Act states:

> **This Act cannot be avoided**
>
> **5**(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In addition to the above, the advocate also writes that in the older of the two tenancy agreements, the 14-day guest policy term originated as a term only applicable to people in subsidized housing, and argues that it is discriminatory against people of low-income who need their housing subsidized. The advocate referred to a previous RTB decision about the 14-day guest policy and other rules of a similar nature said as follows:

And regarding the Analysis section of the same previous decision the advocate referred to the following:

> Firstly, I disagree with the agent when they state that guests that stay overnight more than 14 nights per calendar year become tenants as the Act does not speak to a threshold of 14 days or any specific number of days under the Act.
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> Secondly, I agree with the advocate that 14 days per calendar year is too restrictive and I find the blanket 14-day guest policy to be both oppressive and more restrictive than what federal inmates enjoy in federal prison, which is 18 overnight visits per calendar year.
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> Thirdly, I agree with the advocate that section 30(1) of the Act applies and states:
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> **Tenant's right of access protected**
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> **30**(1) A landlord must not unreasonably restrict access to residential property by
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> (a)the tenant of a rental unit that is part of the residential property, or
>
> (b)a person permitted on the residential property by that tenant.
>
> I find that the landlord has failed to comply with section 30(1) of the Act and although the agent is claiming they are not restricting guests by not denying them entry, they are in essence doing so by writing warning letters to the tenants for violating the 14-day guest policy. Furthermore, the *Berry and Kloet* decision speaks to the Act providing protections for tenants that would not otherwise exist and I find that section 30(1) of the Act protects the tenants from such arbitrary 14-day guest policies.
>
> In addition, I reject the agent's assertion that the tenants are required to comply with the 14-day guest policy because it is part of the tenancy agreement they signed due to section 5 of the Act, which I find applies and states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Therefore, I find that the landlords have attempted to contract outside of the Act by having tenants sign a tenancy agreement which includes what I find to be an unlawful 14-day guest policy. I also find the 14-day guest policy to be oppressive to the tenants and does not take into account the personal circumstances of each tenant.

My decision is supported by prior RTB decisions, where arbitrators have found similar guest policies to be oppressive, repugnant, and paternalistic. Furthermore, the Supreme Court in the *Atira* decision found that:

> …It would be wrong in principle to permit the protection offered by the statute to be eroded by ad hoc non-statutory "policy" instruments promulgated by landlords, however well-intentioned."

Based on the evidence before me, I find that the 14-day guest policy is an ad hoc non-statutory policy of the landlord that only serves to be oppressive to the tenants.

The advocate stated that while I am not bound by the previous decision, that given the similar circumstances related to a 14-day guest policy in a subsidized housing situation, that tenant argues that the 14-day guest policy is unenforceable as it violates section 5 of the Act. The advocate also stated that after the March 10, 2021 warning letter, that was incorrectly dated March 10, 2020, that the tenant advised her son that he could not stay overnight again as the tenant did not want to jeopardize their tenancy. The advocate clarified that the son has always had his own place to stay, and that all overnight visits have stopped since the March 10 warning letter given in 2021.

It was at this time of the hearing that the agents stated that in the subsidy agreement signed by the tenant that the agreement requires all occupants to be added to the agreement. The advocate responded by stating that the previous decision also dealt with the rental subsidy issue.

After 65 minutes, the hearing concluded.

Analysis

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

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

While I have heard from both parties, and there is no dispute that the tenant's son was upset in the lobby of the building on May 9, 2021, I find the screenshot and testimony do not support that the tenant's son significantly interfered with or unreasonably disturbed the landlord as the agents did not dispute that the blue box was replaced by the tenant, that the tenant has not returned to the building since May 9, 2021 and that all but 4 or 5 of the flyers were placed back on the wall by the tenant. As a result, I find the landlord has provided insufficient evidence of this cause. I consider this to be a minor incident that does not justify ending the tenancy as the tenant has not returned to the building based on the evidence before me.

Regarding cause 2, that reads, "Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord", I find the witness not to be credible. In reaching this finding I find the witness more likely than not instigated a confrontation by throwing a cell phone that did not belong to them over a balcony. I find the witness had no authority to touch the phone, was a careless action and served no logical purpose. Furthermore, I find that the witness should have went around the phone with their scooter but instead, they picked up the phone and threw it knowing that it did not belong to them. As a result, I afford very little weight to the testimony of the witness and find the landlord has failed to provide sufficient evidence to support this cause.

Regarding cause 3, I did not hear any supporting evidence from the agents during the hearing to support that the tenant or a guest of the tenant put the landlord's property at significant risk. As a result, this cause is dismissed due to insufficient evidence.

And finally, cause 4, breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. While the landlord did not provide details of this cause until the tenant presented the previous decision to rebut

this cause in relation to the tenant breaching the 14-day guest policy, I find the previous decision takes a reasonable approach. I agree with the previous decision and I also find that the 14-day guest policy to be too restrictive and given that it is a blanket policy is oppressive and more restrictive than what Federal inmates are entitled to when in federal custody, which is 18 overnight visits per calendar year. Therefore, I find the 14-day guest policy is of no force or effect in this tenancy. **I caution** the landlord to immediately cease the 14-day guest policy as I find it violates section 5 of the Act by attempting to contract outside of the Act. I also find that this cause is dismissed due to insufficient evidence by the landlord.

Therefore, based on the above, I find the landlord has provided insufficient evidence to support all causes listed on the 1 Month Notice. As the landlord has failed to prove that the 1 Month Notice is valid, **I cancel** the 1 Month Notice dated May 11, 2021 and find that is of no force or effect.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant the recovery of the $100.00 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

Conclusion

The tenant's application is successful.

The 1 Month Notice is cancelled.

The tenancy shall continue until ended in accordance with the Act.

The tenant is granted a one-time rent reduction in the amount of $100.00 in full satisfaction of the filing fee.

This decision will be emailed to both parties as indicated above.

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: September 27, 2021

Residential Tenancy Branch