Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

Procedural History

This hearing was reconvened from a previous hearing on August 24, 2021 following which I issued an interim decision making a number of procedural orders, dismissing several amendments to the tenant's application with leave to reapply (the "**Interim Decision**"). This decision should be read in conjunction with the Interim Decision.

The Interim Decision and notices of reconvened hearing (containing the call-in numbers for this hearing) were sent to each of the parties, at the emails addresses they provided at the August 24, 2021 hearing, and indicated they could receive emails at.

On August 30, 2021, the tenant made 10 requests for correction and two requests for clarification of the Interim Decision. I drafted a decision responding to these requests on August 31, 2021 (the "**August Correction Decision**"). In it I declined to grant any of the corrections. The clarification requests were either vague, unnecessary (as the interim decision was sufficiently clear), or were attempts to reargue issues dealt with at the August 24, 2021 hearing.

Unfortunately, due to a clerical error, the August Correction Decision was not sent to the parties once I finalized it. I discovered this clerical error when preparing for the reconvened hearing, and immediately arranged for the August Correction Decision to be emailed to the parties on September 22, 2021.

As I denied all requests made by the tenant within the August Correction Decision, I did not think it necessary to adjourn the hearing. However, I was prepared to entertain a request for an adjournment at the hearing, and had arranged that a hearing of mine be reassigned to another arbitrator the following week to create a slot to reconvene this hearing to, should either party have requested an adjournment at the hearing and demonstrated why one would have been necessary. However, neither party raised the issue at the hearing, despite my asking if the landlord had received the August Correction Decision (which she confirmed she had). I did not specifically ask if the

tenant received if, as, for reasons discussed below, I was unaware that she was on the call at the beginning of the hearing. However, there was nothing that prevented the tenant from identifying herself and raising the issue.

Preliminary Issue - Attendance

The tenant attended the hearing but did not identify herself and did not participate in the hearing (I will discuss this in great detail shortly). The landlord attended the hearing. She was assisted by her brother ("**JZ**"). They called a single witness ("**EP**") to give evidence. EP only attended the portion of the hearing where he gave evidence. Once he finished his testimony, he disconnected.

During and immediately following the hearing, I was unsure if the tenant attended the hearing (I will explain below why, after the hearing, I became certain that the tenant attended the hearing). At the beginning of the hearing, I conducted a roll call. I confirmed that the landlord had called into hearing and the landlord advised me that her brother was attending as well. I then asked if the tenant or a representative of the tenant was on the line. No one answered. I advised the landlord that we would proceed in her absence, and catch the tenant up on what she missed if she called in.

I also advised the landlord that several new arbitrators were listening in on this hearing for training purposes. These arbitrators had also listened in on the August 24, 2021 hearing. I advised the parties of this fact at that hearing as well (although I did not mention it in the interim decision). I mention this fact now, as the attendance of these arbitrators made it difficult to tell at a glance by looking at the teleconference console that I use to monitor attendees how many of the people on the call had called into the hearing were parties and how many were observers.

Early in the hearing, the teleconference system announced that a caller had dropped off the call. It did not announce the name of the individual (which it would not if the caller had not provided their name when calling in). I confirmed that the landlord was still on the line. I surmised that one of the observing arbitrators had become disconnected. This (sadly) is not uncommon with the teleconference conference software. Shortly after this disconnection, the teleconference system announced that a new caller had called back in but did not provide the name of the caller. Due to the proximity in time with the disconnection, I assumed it was the person who just disconnected calling back in. I do not have an independent recollection as to whether I asked the caller to identify themselves or if I asked if the new caller was the tenant or agent of the tenant. However, after the hearing, one of the attending arbitrators advised me that I did ask the caller to identify themselves if they were the tenant.

In any event, the caller did not speak up or otherwise identify themselves (which would be consistent with what a re-connecting observer would do), so I continued with the hearing.

As the hearing continued, EP called into the hearing, gave his testimony, and disconnected, and then one additional arbitrator dropped off the call (again due to a teleconference glitch, but did not call back in. This time I knew it was an observer who disconnected as the observer had stated its name).

The hearing continued until approximately 2:05 pm. I advised the landlord that I would not be making an order in the hearing but would issue a final decision. The landlord asked me if the tenant's non-attendance would impact the likelihood of me ordering an order of possession or ordering that the hearing be reconvened. She offered to go to the rental unit to see if the tenant was there. I advised her that this would not be necessary, as I was satisfied that the tenant had received the notice of reconvened hearing which contained the date and call-in instructions for the hearing (as it was attached to the interim decision, of which the tenant had applied for multiple corrections and clarifications). I stated that it was each party's responsibility to attend the hearing, and if the tenant did not, it would be to her detriment. I then advised the landlord that, if there was an emergency which would have prevented the tenant from attending, that this could warrant a new hearing.

Just as I was about to end the call, voice previously unheard at this hearing spoke up and said something to the effect of "why are you not letting me make submissions" or "why can't I speak" (I cannot recall the exact words used). The line went silent for a moment after this, and then I asked the landlord if she was still there. The landlord confirmed that she was and stated that she thought the voice belonged to the tenant. I agreed that the voice was familiar and suspected that the tenant was on the line.

I then consulted the teleconference console and confirmed that none of those people who called into the hearing were muted. I asked if it was the tenant who had just spoken up. I received no response.

I advised the tenant that I confirmed no one was muted and told her that I was not denying her the opportunity to speak at the hearing. I advised her that, if she wanted to make submissions as to the merits of the application, she could do so now. I received no response.

I waited a few moments, again confirmed that no one was muted, and confirmed that the phone number I believed belonged to the tenant was still connected (when someone is speaking, a small icon appears next to their phone number on the teleconference console; when the individual spoke up, I noted which phone number the voice was calling from). I advised the tenant that if she was still on the line, that this was her last opportunity to speak up and make submissions. The tenant did not speak up.

I then advised everyone on the line that I was ending the hearing and asked that they all disconnect. I then disconnected.

After the hearing, I was advised by one of the observing arbitrators that she was the first caller who was disconnected, but that she did not call back into the hearing (not wanting to be disruptive).

I obtained a copy of the teleconference console records after the hearing and confirm that the person who spoke up at the end of the hearing called in at 1:33 pm (roughly 2 minutes after the first person was disconnected). Additionally, I note that this individual stayed on the line until 2:30 pm, well after the hearing ended and all other attendees (myself included) had disconnected. I looked up the phone number of the caller and determined that is the number from a local women's center approximately 8 kilometers from the rental unit.

On September 30, 2021, the tenant made one clarification request and five correction requests on the August Correction Decision (which I will address shortly). On the clarification request, she wrote:

> On September 24, the arbitrator told [the landlord] "I will close and email you decision in two days. Did you receive the email I sent two days ago". [The landlord] said she saw and she would do. next [*sic*]

As the tenant is purporting to quote from what was said at the September 24, 2021 hearing, I now conclude that the tenant attended that hearing.

I did not I disallowed the tenant to participate in the hearing. The tenant did not identify herself as prompted by the teleconference conference software when calling into the hearing. She did not speak up upon calling in to acknowledge her presence or to make any comment whatsoever until the very end of the hearing. She did not speak up when the landlord asked about the effect the tenant's non-attendance might have on the hearing (to correct the misapprehension that the tenant was not on the line, for example).

Furthermore, once the tenant made her presence known, she was given multiple opportunities to make submissions in response to the landlord. She declined to do so.

As such, I find that the tenant has not been denied an opportunity to participate in the hearing. Her non-participation was solely due to her own choices. For this reason, I find it unnecessary to reconvene this hearing to so that the tenant may make submissions.

Service of Evidence

At the August 24, 2021 hearing, the landlord testified, and the tenant agreed, that the landlord served the tenant with her documentary evidence. I find that the tenant has been served in accordance with the Act.

I addressed the tenant's service of the landlord in the Interim Decision.

Effect of the Tenant's Non-Participation

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

As such, even though this is the tenant's application, the landlord bears the evidentiary burden to prove it is more likely than not that the Notice was issued for valid reasons. The fact that the tenant did not participate in the hearing (either by refusing to make submissions or by not attending as the case may be) does nothing to shift the onus from the landlord. The only effect of the tenant's non-participation is that she is deprived of an opportunity to rebut the landlord's case.

Rule of Procedure 7.4 states:

> **7.4 Evidence must be presented**
>
> Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In the interim decision I did not make any order which would allow the tenant to submit evidence and then not attend the hearing. By not participating at the hearing, the tenant failed to present her documentary evidence. Accordingly, I decline to consider it when making my decision. I will consider the brief oral submissions she made at the August 24, 2021 hearing.

Tenant's Requests for Clarification and Correction

As stated above, on September 30, 2021, the tenant made one request for clarification and five requests for correction. Each of these related to the August Correction Decision.

Section 78(1) of the Act enables an arbitrator to:

- correct typographic, grammatical, arithmetic or other similar errors in a decision or order;
- clarify the decision or order; and
- deal with an obvious error or inadvertent omission in a decision or order

a. Clarification

The tenant wrote:

> Clarification: The arbitratior sent an email at 10:45 am on September 22,2021,but the date he signed on August 31,2021. Why did he send later nearly a month? Why did he send only before the 50 hours before the second hearing on September 24, 2021. on September 24, the arbitratior told [the landlord] " I will close and email you dicision in two days. did you receive the email I sent two days ag0". [the landlord] said she saw and she would do .next This decision is for using [the landlord] fighting me next.

As stated above, I wrote the August Correction Decision on August 31, 2021, and due to a clerical error, the decision was not sent until September 22, 2021. Additionally, I understand the tenant to assert that I told the landlord I would provide her a copy of this decision within two days of the hearing. While I cannot recall the exact language used, I do not believe I committed to providing the decision within such short period of time. It is my practice to advise parties that I have 30 days under the Act to provide them with a copy of my decision, and, in cases involving evictions, to advise the parties I will try to get it to them as soon as possible.

b. Corrections

The tenant wrote:

> Obvious error: Wrong data The arbitratior sent an email at 10:45 am on September 22,2021. The date he signed on August 31,2021.
>
> Obvious error: Arbitratior needs to follow common principles to mail to me but not send to me two days before the second hearing

I have addressed the issue of the date of the August Correction Decision and the reason for its late sending above. The second point is not a request for correction, but rather an argument or complaint by the tenant regarding the circumstances surrounding service of the August Correction Decision. No correction is necessary with regards to these two requests.

The tenant wrote:

> Obvious error: "additional evidence" The arbitratior said he found document on August 26 that I attempted to submit additional evidence. These evidence are not additional, but submitted on August 13, 2021 and the arbitratior did not give me chance to talk about but dismissed all with the reason after deadline. The arbitratior dismissed all because he wants to delete all evidence not good for [the landlord]

I have consulted the RTB online evidence management system and confirm that the tenant only uploaded three documents on August 13, 2021, none of which are the documents the tenant uploaded with her correction request. It is possible that she uploaded the documents on another day. I have not re-reviewed all the evidence that was submitted after the deadline. In the event this is the case, I will correct my decision to remove the word “additional” as doing so does not make a substantive change to the August Correction Decision. If the documents were not “additional” then they were already excluded from evidence. If they were, they would be excluded by the order made in the Interim Decision. In either event, that evidence would not be considered at this hearing (and indeed, as the tenant did not present any evidence at the September 24, 2021, have not been considered).

I did not exclude this evidence because it is “not good” for the landlord. I provided my reasons for excluding this evidence in the interim decision.

The tenant wrote:

> Obvious error: The arbitratior lied about applications He did not talk about any application on August 24 and he declared he would dismiss all . He never said the smoke detector would be talked in the next hearing.
>
> Obvious error: New discrimination The describe to my request on August 26 about the [landlord’s] mental issues is the arbitratior person emotion full of new discrimination to me .What he said is just he ordered me to serve my pleas to [the landlord] and [the landlord] has done They might play a game together. He needs to show his logical evidence or thoughts to support his new discrimination and harm to me.

These are not requests for corrections of “obvious errors”. They are allegations as to my conduct at the prior hearing. A request for correction is not the appropriate way to address these allegations. I am not capable of making any correction in connection with these requests.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, JZ, and EP, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of their claims and my findings are set out below.

The parties entered into a tenancy agreement starting October 27, 2019. Monthly rent is $600 and is payable on the first of each month. The tenant paid the landlord a security deposit of $300, which the landlord continues to hold in trust for the tenant.

The rental unit is located on the lower floor of a single detached home. The landlord occupies the upper floor. EP occupies a self-contained suite also located on the lower floor.

The landlord testified that the tenant has repeatedly endangered herself and other occupants of the residential property while cooking in the rental unit. The landlord testified that on two occasions in 2020, the tenant neglected to pay attention to food she was cooking on the stove top which resulted in the food burning and creating significant amount of smoke. The landlord testified that after the first time this happened the tenant advised her that she had fallen asleep while cooking. The landlord gave her a verbal warning after each of these two incidents but did not issue any formal notice or warning letter.

JZ testified that on April 9, 2021, he was on the upper floor of the residential property when he heard EP calling from the backyard for help. He testified that he saw EP outside with his young granddaughter, and that smoke was pouring out of the rental unit. He testified that he went downstairs and saw that the tenant was still inside the rental unit. He covered his mouth and walked inside. He said he saw “water everywhere” and that parts of the kitchen had been burned. He testified there is a large amount of smoke in the rental unit but the fire had been extinguished. He testified that the tenant told him that she had left a pan of oil unattended on the stove (which was turned on to high) and then went to the washroom. He did not say if she indicated for how long she was in the washroom.

JZ testified that the range hood above the stove was completely burned, as were the bottoms of the cupboards. He also testified that the walls in the rental unit had turned black from the smoke. The landlord submitted photographs of the range hood which show it to be significantly damaged by fire and the parts of it were charred and melted. The landlord submitted photos of this damage.

The landlord testified that, on May 10, 2021, she was in the upper unit and smelled smoke coming from the rental unit. She went downstairs, knocked on EP’s door, determined the smoke was coming from the rental unit, and then entered the rental unit

with EP and his wife. She testified that the tenant was not in the rental unit and had left the stove on with a pot of pasta on it.

EP gave testimony confirming the events described by the landlord and JZ, but testified that he could not recall the exact date of the first fire, but believed it occurred during the first month of his tenancy, which he said was in May 2021. He testified the second incident also occurred in May 2021. With regard to the first incident, he testified that the tenant knocked on his door and told him there was a fire in her rental unit. He testified that her hair was burning. He stated that his six-year-old granddaughter was staying with him at the time and that he quicky went back into his unit to retrieve her and get her out of the house as quickly as possible. Once he was outside with her, he began yelling for help, which attracted the attention of JZ.

After EP disconnected, the landlord testified that EP's tenancy actually started in April, and not May, 2021. She did not provide any documentary evidence to support this assertion.

On April 11, 2021 the landlord issued the Notice. It listed an effective date of May 11, 2021. It stated the reason for ending the tenancy as:

- 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
  - Put the landlord's property at significant risk
- Tenant or person permitted on the property by the tenant has caused extraordinary damages to the red to the unit or property.

The Notice provided further details of the cause for ending the tenancy as:

> On April 9 around 2:00 PM, [the tenant] burn the kitchen at the basement. According to her statement, she turned on the stove to the maximum heat and poured the oil in the cooking pan. She left the stove on and went to the bathroom and caused a fire in the kitchen. The kitchen exhaust hood, walls on three sides, the paint on the dryer machine as well as the cupboards besides the stove are severely damaged. The walls were damage from the fire and also scrubbing the soot by [the tenant]. The tenant also failed to call the fire department right after the accident. This is the third time happening during her stay. The first and second time happened on March 9, 2020 around 2:30 AM and April 23, 2020. Her behavior and neglect has put everyone's safety and the property at significant risk and therefore we would like to ask [the tenant] to move by May 11, 2021.

The tenant applied to dispute the Notice on April 19, 2021.

While the tenant did not make any submissions at this hearing, she briefly made submissions about her defense during the August 24, 2021. I understand the tenant's position to be that she denied causing either of the fires in 2020 and that she should not be held accountable for the April 2021 fire, as the landlord had failed to install a smoke detector in the rental unit, which would have altered her to the fire while she was in the bathroom before it caused the damage that it did.

Analysis

Section 47 of the Act states:

> **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
>
> […]
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;
>
> […]
>
> (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord must prove it is more likely than not that the tenant acted in such a way that satisfies the criteria set out at section 47(1) of the Act. For the reasons that follow, I find that the landlord has done this, and is entitled to an order of possession.

I accept the landlord's and JZ's testimony in its entirety. Their testimony was corroborated by EP. I do not find the fact that EP testified the first fire occurred in May (as opposed to April, as testified by JZ and as stated on the Notice) to detract from his credibility. His account of what happened largely matches JZ's account. It is not unreasonable for an individual to misremember a specific date. The date he said he recalled the first fire occurring is near enough to the date the Notice indicates the fire occurred, so as to not cause me to find him an unreliable witness.

Additionally, I do not understand the tenant to dispute that the April fire occurred. I understand her position to be that she should not be evicted for it, because the landlord did not install a smoke detector.

I must first note that the landlord did not make submissions on this point one way or another. However, I do not find it necessary to make a factual determination as to whether the landlord failed to install a smoke detector. Even if this she did not (which I explicitly make no finding on), this would not relieve the tenant of the responsibility to act in such a way so as to not cause fire risks.

I accept JZ's undisputed testimony that the tenant advised him that she left a pan of oil unattended on the stove at maximum heat while she used the washroom. Such an action in and of itself inherently dangerous. The risk of fire is reasonably foreseeable. I cannot say that the presence of a smoke detector would have made any difference to whether a fire started or not. It may have caused the tenant to return to the stove earlier. However, by the time smoke would have been detected, I would find that the unattended pan full of oil on a hot stove emitting smoke would already represent a thing which both: seriously jeopardized the health and safety the landlord, JZ, and EP; and put the landlord's property at significant risk.

That is sufficient to warrant issuing a notice to end tenancy for cause.

The May 2021 incident does not form a basis for issuing the Notice (as it was issued in April 2021). As such, I need not consider whether the events described by the landlord and EP meet the criteria set out at section 47(1) of the Act.

As I have found that the Notice was validly issued, I dismiss the tenant's application without leave to reapply.

Section 55(1) of the Act states:

> **Order of possession for the landlord**
> **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.

I have reviewed the Notice and find that it complies with the form and content requirements set out at section 52 of the Act.

As such, and as I have dismissed the tenant's application to cancel the Notice, I order that the tenant provide the landlord with vacant possession of the rental unit within to days of being served with a copy of this decision and attached order by the landlord.

Conclusion

I dismiss the tenant's application, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order by 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: October 1, 2021

Residential Tenancy Branch