



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNE

Introduction

On November 24, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for End of Employment pursuant to Section 48 of the *Residential Tenancy Act* (the “Act”).

On November 26, 2021, the Tenant amended his Application to dispute a One Month Notice to End Tenancy for End of Cause (the “Notice”) pursuant to Section 47 of the *Act*. As a One Month Notice to End Tenancy for End of Employment was never served to the Tenant, only the One Month Notice to End Tenancy for Cause will be addressed in this hearing.

The Tenant attended the hearing. The Landlord attended the hearing as well, with Z.M. attending as co-owner of the rental unit. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing package by registered mail on November 26, 2021, and Z.M. confirmed that they received this

package. Based on this undisputed testimony, I am satisfied that the Landlord has been duly served with the Tenant's Notice of Hearing package.

The Tenant advised that he served his evidence, to the Landlord's service address on the Notice, by registered mail on February 22, 2022 (the registered mail tracking number is noted on the first page of this Decision). Z.M. confirmed that the address that the Tenant served his evidence to was one address for service; however, they did not receive this package as they had not returned home.

Based on this undisputed testimony, I am satisfied that the Tenant's evidence was sufficiently served to an address provided by the Landlord, and was also served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure. As such, this evidence was deemed to have been received five days after it was mailed. Consequently, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord confirmed that no documentary evidence was submitted for consideration on this file as they assumed their evidence submitted on a different file would be transferred over.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2009, that rent was currently established at \$593.60 per month, and that it was due on the first day of each month. A security deposit of \$272.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

While the Landlord was not sure when the Notice was served to the Tenant, the Tenant confirmed that he received this on his door on November 17, 2021. The reasons the Landlord served the Notice are because the "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 and put the landlord's property at significant risk". The Notice indicated that the effective end date of the tenancy was December 31, 2021.

The details of dispute were indicated on the Notice as follows:

Due to flood which was no one's fault, the building has sustained extensive water damage . Access is required into Unit 1 for restoration to deal with the flooring that has to be fully replaced in the unit as well as drywall. Due to the age of the building, there may be asbestos and therefore testing will also be required within the suite and any ensuing abatement and necessary repairs. The tenant is not cooperative to get repairs done in his unit which affects the integrity of building and potentially other tenants due to contaminated water to carpets and walls. The restoration team has advised that they need to get into the unit to complete the work for health and safety of building and other tenants. The landlord has utilized qualified professionals to deal with this unfortunate circumstance. The insurance company is also involved and the restoration company is accountable to both the insurer, as well as the landlord. The tenant is putting the landlord's property at significant risk should the appropriate repairs not be done in a timely manor.

Z.M. and the Landlord were unclear with dates or with specifics regarding the details of the circumstances surrounding service of this Notice. Z.M. advised that a rainstorm occurred on November 14, 2021, which resulted in an elevated water table that flooded the rental unit and other units in the building. He stated that a restoration company came in to dry the flooded areas, and when they measured the moisture levels, they determined that there would be a high risk of black mould developing. As well, it was determined that walls were required to be removed and that asbestos was discovered. Due to the necessary abatement, the Tenant could not live in the rental unit.

He stated that they informed the Tenant, on November 15, 2021 by email, about required restoration and that the Tenant refused to allow the restoration company into the rental unit to dry the affected areas. Instead, he stated that the Tenant replied by email on November 16, 2021 stating that he did not believe the required restoration was necessary. As a result, the Tenant took his own shop vac to remove the water, and then used his own space heater and dehumidifier to dry the rental unit.

He submitted that the Tenant refused to comply with the Landlord's requests to prepare the rental unit for the required restoration, and he refused the Landlord's requests to allow the restoration company to enter the rental unit to deal with the flooding issue.

The Landlord advised that the hall was damaged due to the flooding and that the affected walls in the building contain asbestos, which cannot be removed with the Tenant still present in the rental unit. She stated that the Tenant was advised of what steps were required of him in order for the restoration company to commence repairs. However, the Tenant attempted to remediate the damage himself and he informed the Landlord that it was his opinion that the recommended repairs by the restoration company were not necessary. She was unsure of dates of when the Tenant was requested to comply; however, she believes that the Tenant refused to follow the restoration company's instructions prior to service of the Notice.

The Tenant advised that the Landlord knocked on his door on November 15, 2021, that she viewed the rental unit, and that she told him to clear out his locker, which he completed. He confirmed that he sent the Landlord an email on November 16, 2021, which he acknowledged was a "momentary lapse of judgement" as he was affected by overwhelming anxiety. He apologized for this.

He testified that an inspector came to the rental unit on November 16, 2021 to assess the damage and there was some talk of walls and carpets being required to be removed. It is his belief that abatement is required; however, he would like the repair plans modified to accommodate his needs.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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;*

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the reasons that the Landlord served the Notice on the Tenant for seriously jeopardizing the health or safety or a lawful right or interest of the Landlord or another occupant, or for putting the property at significant risk, I find it important to note that the Landlord has submitted no documentary evidence to support her position. However, the Tenant has submitted an email dated November 16, 2021 to the Landlord where he acknowledged that he has complied with some of her requests. However, he

stated that he took “the shop vac to a section of the hallway and my suite in an effort to suck up as much excess water as possible. I am using heat, a dehumidifier and a desk fan to dry the carpet and wall in my suite as well. So far what I’m doing seems to be working and I expect the wall and carpet in my suite to be completely dry by the morning.” In addition, he noted that in his opinion, the “risk of biohazards is low and it is a risk I’m willing to live with. Where removing the wall and carpet are concerned, it is not necessary.”

Given the undisputed evidence that there was a substantial flood of the building, I can reasonably infer from the Tenant’s response that there was likely a significant amount of water in the hallway and rental unit. As well, it is evident that the Tenant was likely provided with direction, by the Landlord, of what next steps were required to commence remediation. In addition, as the Tenant confirmed that a restoration company was involved, I can also reasonably infer that this company likely provided this direction to the Landlord and the Tenant.

However, given the response in this email, the Tenant clearly had taken it upon himself to determine what he believed was the best course of action to mitigate this damage and deal with the impact of the flood. As there is no evidence before me that the Tenant had any professional qualifications to assess the flood damage, and/or determine the necessary and appropriate steps required to remediate the damage, I am satisfied that he failed to comply with instructions provided to him which would have allowed the Landlord to begin satisfactory repairs to the rental unit.

Given that the Tenant elected to attempt to deal with the flooding in a manner that he determined was appropriate, as opposed to allowing the professional restoration company to handle the matter, I am satisfied that the Tenant essentially hindered the Landlord’s ability to adequately treat the rental unit. I find that this would fall under the category of seriously jeopardizing the health or safety or a lawful right or interest of the Landlord or another occupant. Moreover, in doing so, this delay has likely contributed to the potential development of additional damages to the building, and I find that this would fall under the category of putting the property at significant risk. As such, I am satisfied that the Tenant’s actions justify the reasons for service of the Notice.

As the Landlord’s Notice is valid, and as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

The effective end date of the tenancy of December 31, 2021 on the One Month Notice to End Tenancy for Cause is changed to the nearest date that complies with the law. Since the effective date has passed, I grant the Landlord an Order of Possession effective on **March 31, 2022 at 1:00 PM** after service of this Order on the Tenant.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective on **March 31, 2022 at 1:00 PM** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and 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: March 17, 2022

Residential Tenancy Branch