



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**, **DRI, OLC**, FFT

Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on January 17, 2022 seeking:

- to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”),
- to dispute a rent increase,
- the Landlord’s compliance with the tenancy agreement and/or legislation,
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 14, 2022. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing. The Landlord confirmed they received the prepared evidence from the Tenant. The Tenant confirmed they received documentary evidence from the Landlord. With disclosure confirmed, all evidence submitted by the parties receives my full consideration herein.

Preliminary Matter – unrelated issue

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that

have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the One-Month Notice issued by the Landlord on January 13, 2022. I dismiss the Tenant’s dispute of a rent increase, and their plea for the Landlord’s compliance with the legislation and/or the tenancy agreement. The Tenant has leave to reapply on both of these issues.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice pursuant to s. 47 of the *Act*?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties submitted a copy of the tenancy agreement. This shows the parties signed the agreement on April 1, 2020. The rent amount on the agreement was \$750 payable on the first day of each month. The agreement specified a fixed term of 12 months starting from April 1, 2020 and made no specific indication of the status after that timeframe.

The Landlord pointed to a specific term of the agreement wherein they ask the Tenant to always close the gate when entering or exiting the property, as well as the Tenant not endangering or threatening other residents on the property, or the Landlord.

In the hearing the Tenant presented that they had no legal representation at the time they signed the agreement, with its terms that affect their legal standing at the present. They were informed by the Landlord that they could keep a pet, and the Tenant’s recollection is that the Landlord informed them “it was in their best interests to sign the

tenancy agreement.” They noted they were living in the rental unit for a full year prior to signing this tenancy agreement.

The Landlord recalled that it was the Tenant who asked for a new signed tenancy agreement, this to fulfill the requirements of their subsidized housing arrangement. There was no tenancy agreement with the previous owner, and the Landlord verified this independently prior to the hearing.

In the hearing the Tenant questioned the Landlord on the nature of the tenancy agreement going forward after the fixed term expired on March 31, 2021. They submitted the agreement changed to a month-to-month type agreement; however, counter to this the Landlord maintained the payments they received for rent were for use and occupancy and that was how they regarded the status of the tenancy going forward.

The Landlord submits the tenancy agreement had expired on March 31, 2021, and the Tenant has remained in a state of use and occupancy only since that date. On direct questioning from the Tenant, the Landlord confirmed they have been receiving rent payment amounts to the present. Previously, on April 15, 2021, they had requested the Tenant to leave by May 15, 2021. Sometime after this the Tenant offered \$250 more in rent to the Landlord which the Landlord accepted as rent starting in November 2021.

The Landlord issued the One-Month Notice on January 10, 2022. They initially sent this to the Tenant via email on January 10, January 11, and January 13. They sent the document to the Tenant – dated January 13 and signed – via registered mail on January 13. The Landlord included evidence of that delivery on January 20 in their evidence.

The Tenant did raise the format of the document as an issue, providing in their Application that the document was unsigned and undated and therefore invalid. In the hearing the Tenant acknowledged service by registered mail.

On page 2 of the document the Landlord indicated the following reasons for ending the tenancy via the One-Month Notice:

- Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order

In the hearing the Landlord clarified the last point re: non-compliance by stating they considered the tenancy to continue on a use and occupancy basis only. They noted the tenancy agreement ended March 31, 2021.

The Landlord set out their position on the other two points indicated in their written submission and response:

- the Tenant left the gate open in summer of 2020 and this prompted an angry reaction when the Landlord reminded them of the need for its closure
- this was met with more threats and racially-tinged statements and the Landlord was aware of the Tenant's "unstable condition"
- choosing not to further exacerbate the problem, the Landlord chose not to call the police in regard to the incident
- the Tenant's pet ran onto the freshly-paved driveway, this is "irreversible damage" despite the tenancy agreement not allowing pets
- the tenancy agreement ended on March 31, 2021 – after this, the Tenant did not leave after the Landlord asked them to
- from December 2021 to January 2022 the Tenant approached the neighbouring residents "with abusive language, racial and threatening aggression", for which the police were called
- these incidents with the neighbours were what prompted the Landlord to end the matter with the One-Month Notice.

As an exhibit to their statement, the Landlord provided the account of the neighbouring residents. The details section in the One-Month Notice is composed using these statements from the neighbouring residents' written account:

- the Tenant placed pet droppings on the neighbouring residents' doorstep, in order to "teach [them] a lesson", also making an implied threat using the shovel they carried for that purpose
- days later the neighbouring residents observed the Tenant eavesdropping, confirming later what was said through the Tenant's own statements
- the Tenant invited one of the neighbouring residents to hit them; this prompted the neighbour's call the police – the Landlord labelled this "intimidation and harassment tactics"

- the neighbours called police again when the Tenant started removing their personal items from the garage space the Landlord allocated to them – this was combined with the Tenant’s own vehicle blocking that of the neighbours.

In the hearing, the Landlord reiterated that they had to take action to have the Tenant leave because of their actions with the other neighbouring residents.

In response to this in the hearing, the Tenant denied they had been interfering with the Landlord’s other rental unit occupants. The pets of all building residents use the same common area, and they could not identify whose pet was responsible for the droppings not picked up. Other confrontations individually with the Landlord resulted from the Landlord’s own raised voice.

The Tenant in the hearing was not that named specifically by the neighbouring residents, so they denied or provided reasons for that absent parties’ actions in the hearing. They also pointed to the shortcomings of the other neighbouring residents, such as garbage being left outside.

Analysis

The *Act* s. 47(1) sets out each subsection that the Landlord indicated on the One-Month Notice as reasons for ending the tenancy.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. The Landlord spoke to the reasons in oral testimony and provided a written accounts from the neighbouring residents.

Regarding the third point indicated by the Landlord on the One-Month Notice – that of the Tenant’s non-compliance – the *Act* s. 47(1)(l) specifies an *order of the director*, meaning a dispute resolution order. With no evidence the Landlord obtained an order from the Residential Tenancy Branch on the status of the tenancy or other conditions, I find that indication on the One-Month Notice is ineffectual and of no validity.

I conclude the conduct of the Tenant – amounting to interference or disturbance to the Landlord and others – has been ongoing for quite some time. This is insurmountable in the evidence of the Landlord. Given the frequency and severity of the disturbances involved – those which involve threats and other rash actions instead of discussion or

negotiation – I find the One-Month Notice is valid and the tenancy will end for this reason.

The Tenant present in the hearing was not the individual named by the neighbouring residents as being the chief source of disturbance and interference. The Tenant who was present made statements of denial; however, I find their account of events in question was not first-hand knowledge and I am not satisfied they were present for those events. In contrast to this is the direct written statement of the neighbouring residents. I give more weight to this evidence; the Tenant present in the hearing did not offset this with sufficient testimony to describe alternately what happened. I accept the neighbouring residents' account to be a closer approximation of fact, with reference to dates and times, and specific words uttered.

I find the combination of disturbance with the Landlord, and the more serious incidents of interference and intimidation with the neighbours constitute a valid reason for the Landlord to end the tenancy. With this in mind, the consideration of whether the tenancy was on-going on a month-to-month basis is largely irrelevant.

In line with s. 47, I find the Tenant's actions, and those of persons permitted on the property by the Tenant, were those which "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property." The Landlord has provided sufficient evidence of the Tenant's conduct and interactions with other residents that causes legitimate concern.

I find the One-Month Notice issued by the landlord on January 13, 2022 complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. By this provision, I find the Landlord is entitled to an Order of Possession where the copy mailed to the Tenant bears the Landlord's signature and is dated.

Because they were not successful in this Application, I find the Tenant is not entitled to reimbursement of the Application filing fee.

Conclusion

Under s. 55(1) of the *Act*, I grant an Order of Possession effective two days after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 19, 2022

Residential Tenancy Branch