



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOPEHILL LIVING IN COMMUNITY
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPC
Tenant: CNC MT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 10, 2022.

The Landlord was represented by two agents at the hearing and will be collectively referred to as the “Landlord.” The Tenant also attended the hearing, with her case manager, J.B., and her sister-in-law, S.B. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other’s documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Should the Tenant be allowed more time to make an application to cancel the 1 Month Notice to End Tenancy for Cause (the Notice)?
- Should the Notice be cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord stated they served the Notice by posting it to the Tenant’s door on May 27, 2022. The Tenant was unclear about what she received, and when, although she

did acknowledge receiving it. The Notice indicates the following reasons for ending the tenancy on the second page:

1. *Tenant or a person permitted on the property by the tenant has put the Landlord's property at significant risk.*
2. *Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the second ground identified by the Landlord, as this ground is what my decision hinges upon.

The Landlord provided a written statement as well as oral statements. They explained that this rental unit is located in a large building, and is run on a not-for-profit basis to house marginalized people with mental health challenges. The Landlord explained that this rental unit is one of around 400 units in the complex, and they have to balance the needs of this Tenant with the needs and safety of other vulnerable people in the building.

The Landlord stated that the Tenant has lived in the rental unit for around 15 years, and there hasn't been a significant number of issues until the last few months. The Landlord explained that the Tenant has started to become increasingly hard to manage and agitated in the last little while. More specifically, the Landlord referred to several incidents where the Tenant has acted disrespectfully to staff in the building. The Landlord stated that the Tenant stole items from the office in February 2022. The Landlord explained that they have tried to speak with the Tenant about her behaviour but the Tenant has not taken them seriously or changed her approach.

The Landlord also pointed to an incident in March of 2022, where other occupants in the building reported that the Tenant entered their unit, without permission, and began rummaging through items.

Following this, the Landlord stated that on April 10, 2022, the Tenant misused her toilet, and caused it to overflow. The Landlord explained that, rather than report the flood event right away, the Tenant waited until April 11, 2022, to report the issue (at around

1pm). At that time, the Landlord stated the Tenant advised them it had been flooding since the day prior.

The Landlord pointed out that, although the flood started on a Sunday, which is a day when the office is closed, they continually monitor the on-call emergency telephone line for any emergency that comes up, including water damage. The Landlord explained that the Tenant has been provided this number before, and the Tenant has used it in the past for other issues she needs help with. The Landlord stated that this number is also posted in the building. However, the Tenant did not call this number, when the flood started.

The Landlord stated that the flood started on April 10, 2022, and the toilet continued to leak and overflow for a full day, and since the Tenant failed to report it, the water infiltrated the floor, the walls, and spread into surrounding areas, causing around \$6,000.00 worth of damage.

Following this flood, the Landlord stated that the Tenant kept turning off the fans and dehumidifiers which impeded the remediation. Further, the Landlord spoke to numerous incidents over the past several months, including an incident where the Tenant left feces on her carpet. The Landlord further stated that the Tenant has continued to steal items from the common kitchen, and other building supplies. The Landlord also indicated that there was an incident where the Tenant left her urine-soaked bedsheets in the hallway outside the laundry room, and also several occasions where the Tenant has acted inappropriately (stealing more items, walking around unclothed in the building, making other residents uncomfortable).

The Landlord explained that the Tenants behaviour has still not sufficiently improved following issuance of the Notice, and there have been numerous incidents in the past couple of months regarding the Tenant stealing items, trespassing in other units etc.

The Tenant apologized for her behaviour. J.B. stated that she is the Tenant's case manager, and the Tenant has been dealing with declining cognition and mental health, especially over the last few months. J.B. stated that the Tenant is not in a mental state such that she fully understands the results of what she is doing and she has impaired judgement. J.B. and S.B. also noted that the Tenant required a significant amount of help preparing this application to cancel the Notice, and she required extra time to submit the application because the Tenant is unable to process her legal options on her own. J.B. stated that the Tenant is in the midst of a mental health crisis, although she is on new medications which should have a positive impact on her behaviour.

S.B. agreed with J.B.'s assessment, and noted that the Tenant has been on mental health disability for 40+ years. They both acknowledged that the Tenant requires more assistance, and help, and they are seeking alternative, and more supportive, long term housing options for her.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

Application for More Time

I note the Tenant has applied for more time to make this application to cancel the Notice. Given that the Tenant applied late, I find the Tenant's request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

After reviewing the file before me, I note that the Tenant has significant mental health issues, and I am satisfied these issues were such that she would have had a difficult time reading the fine print on the Notice, including the timelines for making an application to cancel the Notice. I am satisfied this would have materially impacted her ability to apply in a timely manner.

I find the Tenant is deemed to have received the Notice on May 30, 2022, 3 days after it was posted to her door. The Tenant applied to cancel the Notice on June 23, 2022. The Tenant had 10 days to file this application to cancel the Notice, following receipt of it. It appears it took her about 23 days to file the application. However, I am satisfied that the Tenant's reasons for applying late are sufficiently strong and compelling, given her extensive struggles with cognition and mental health. As such, I find the Tenant is

entitled to an extension of time to file this application. The merits of the application will be addressed further below.

1-Month Notice

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

As stated above, the Landlord issued the multiple for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the second ground identified by the Landlord, as this ground is what my decision hinges upon.

The second ground on the Notice is as follows:

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

I have considered the facts and evidence surrounding the flooding incident on April 10, 2022. I note the Landlord testified and wrote in their submission that on April 10, 2022, the Tenant misused her toilet, and caused it to overflow. The Landlord explained that, rather than report the flood event right away, the Tenant waited until April 11, 2022, to report the issue (at around 1pm), despite the fact that her toilet was actively overflowing and flooding the surrounding area and had been since the previous day. The Landlord also pointed out that although their office isn't open on Sundays (April 10, 2022), they have an emergency telephone line for these types of issues. I also note the Landlord stated the Tenant has used this number in the past, and that this after-hours emergency number is posted in the building.

The Tenant did not refute the Landlord's version of events. Having reviewed this matter, I find the Tenant's delayed response to the flood she caused was such that it caused unnecessary and extraordinary damage to the building. I find the Tenant's actions, and lack thereof, following the toilet flood significantly magnified and exacerbated damages to the building, given the fact that numerous hours passed with no apparent action to mitigate or seek assistance.

I find the Landlord has sufficient cause to end the tenancy under this ground. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a 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 find that the Notice complies with the requirements of form and content. I find the Landlord is entitled to an order of possession effective **November 30, 2022**, after service on the Tenant.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **November 30 2022**, at 1:00 p.m. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 11, 2022

Residential Tenancy Branch