



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OMAHS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, RR, RP, LRE, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant July 14, 2022 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated July 07, 2022 (the "Notice")
- For compensation for monetary loss or other money owed
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For a repair order
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing. The Agent for the Landlord (the "Agent") appeared at the hearing and called two witnesses, L.M. and L.S. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and request for the filing fee, and dismiss the remaining requests because they are not sufficiently related to the dispute of the Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent confirmed receipt of the hearing package.

The Tenant testified that they did not receive the Landlord's evidence. The Landlord submitted documentary evidence of service with Tracking Number 640 on it. The Agent confirmed the Landlord's evidence was sent November 22, 2022, to the rental unit by registered mail. I looked Tracking Number 640 up on the Canada Post website which shows notice cards were left November 24 and 29, 2022, in relation to the package.

Based on the testimony of the Agent, documentary evidence of service and Canada Post website information, I am satisfied the Tenant was served with the Landlord's evidence in accordance with section 88(c) of the *Act* on November 22, 2022. The Tenant cannot avoid service by failing to pick up registered mail packages. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package November 27, 2022. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started January 22, 2021, and is a month-to-month tenancy. Rent is \$950.00 per month due on the first day of each month.

The Notice was submitted. The effective date of the Notice is August 31, 2022. The grounds for the Notice are:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☒ put the landlord's property at significant risk
- ☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- ☐ Tenant has not done required repairs of damage to the unit/site/property/park
- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause state:

Details of the Event(s):

Tenant has repeatedly disturbed the quiet enjoyment of his neighbours. Also, frequent visits from the RCMP, frequent fighting in and in front of his unit and lastly the alleged assault on another tenant as well as damage to OMAHS property are all in breach of his Tenancy Agreement and Crime Free Addendum. With this, he has significantly seriously jeopardized the health or safety of another tenant as well as put the landlord's property at significant risk.

The Tenant did not raise an issue with the form or content of the Notice when asked.

The parties agreed the Notice was served on the Tenant in person July 07, 2022.

The Agent testified as follows. The Tenant is consistently disturbing neighbours in the rental unit building and across the street. The Tenant has been issued eight breach letters due to their behaviour. One of the incidents with the Tenant involved the Tenant being chased by a vehicle into the parking lot where others beat the Tenant up while other residents of the building were present. Police attended due to this incident. The Tenant assaulted another resident of the building, entered the resident's unit and caused damage to the unit. There have been numerous police visits to the Tenant's unit which disturbs other residents because police bang on the door and neighbours can

hear this. The issues with the Tenant started with loud music and yelling but have escalated.

Witness L.M. provided the following relevant testimony. L.M. lives across the street from the Tenant. L.M. has witnessed police vehicles at the Tenant's unit twice per week. The Tenant is constantly being noisy and having parties.

The Tenant was given an opportunity to ask L.M. questions. I have not outlined the questions or answers here because they relate to testimony that I do not rely on for my decision. The Tenant questioned L.M. about how L.M. linked certain additional issues to the Tenant and I agree there is not a strong link between the additional issues, which are not noted above, and the Tenant and therefore I have not considered them or relied on them for my decision.

Witness L.S. testified as follows. L.S. lives in the same building as the Tenant. L.S. has been hearing noise coming from the rental unit and submitted a complaint letter about this. The noise includes slamming car doors, yelling, screaming, swearing and fighting. The noise is occurring up and down the street day and night. L.S. has seen police cars parked at the rental unit three or four times. L.S. knows it is the Tenant causing the noise issues because it is the Tenant who is outside screaming when L.S. looks out the window. Further, the commotion is occurring right in front of the Tenant's unit. L.S. knows the Tenant is causing issues and problems in the building; however, L.S. is the only person willing to talk about it because others are scared to.

The Tenant was given the opportunity to ask L.S. questions and did not do so.

The Tenant testified as follows. The Tenant thought this hearing was about an alleged incident of the Tenant being dangerous in the building. If the Tenant knew noise complaints were an issue, they would have called witnesses. The Tenant gets along with all of their neighbours. The allegations of L.M. are far fetched. The Tenant has not done the things alleged. The Agent hates the Tenant and is getting others to lie for them. The incident with a vehicle chasing the Tenant and their friend occurred; however, the Tenant and their friend were victims of the others who assaulted them. The police have attended the rental unit a few times. One of the incidents of police attending was due to a missing person and the other was due to a noise complaint.

The Agent sought an Order of Possession effective two days after service on the Tenant. In response to this, the Tenant stated they would like a couple months to move

if required and that they cannot move in two days. The Tenant also took issue with not knowing the reason for this hearing and pointed to the Application and what was stated in it as the problem.

The Landlord submitted the following documentary evidence which I will further detail in my analysis as necessary:

- Breach letters
- Complaint letters and emails
- Photos

Analysis

The Notice was issued pursuant to section 47 of the *Act*.

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice July 07, 2022. The Application was filed July 14, 2022, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Based on the testimony of the Agent, L.M. and L.S., as well as the breach letters and photos, I accept that it is more likely than not the Tenant has caused the following issues in the building:

- Police attendance at the rental unit numerous times which disturbs others
- Noise issues including being noisy, having parties and the Tenant or their guests slamming car doors, yelling, screaming, swearing and fighting
- Being involved in fights in the parking lot that are disturbing others

The Landlord submitted numerous additional complaints from others. There are two issues with these complaints. Some do not show the author, and some do not show who the complaint is about.

I put little weight on the complaints that do not show the author. I do not find it fair to the Tenant to consider complaints when the Tenant does not know who the complainant is

and therefore cannot fully address the complaint. I acknowledge people may not want their names disclosed; however, these are legal proceedings and it is not fair to the Tenant to have to answer to complaints when they do not know who they are from.

In relation to the complaint that does show the author but not that it relates to the Tenant, I find this problematic but do put some weight on it because it is supported by a breach letter.

I also note that the Landlord has submitted a signed statement along with photos about the Tenant assaulting another resident and damaging the resident's unit.

I find the Landlord has submitted sufficient evidence to meet their onus to prove on a balance of probabilities that the Tenant is causing the problems noted in the rental unit building. The testimony of the Agent, testimony of L.M., testimony of L.S., breach letters, photos, complaint letter as well as letter and photos about the Tenant assaulting another resident all point to the Tenant significantly interfering with and unreasonably disturbing other residents of the building. Although there are some issues with the Landlord's evidence, the evidence as a whole paints a consistent picture of the Tenant disturbing others. I find the Landlord has met their onus to prove the grounds for the Notice on a balance of probabilities.

I note that the Tenant's testimony alone that they did not do the things alleged does not overcome the testimony of the Agent, testimony of L.M., testimony of L.S., breach letters, photos, complaint letter as well as letter and photos about the Tenant assaulting another resident.

In relation to the Tenant not knowing what this hearing was about, this hearing was initiated by the Tenant through their Application to dispute the Notice. Any deficiencies in what is stated in the Application would be due to the Tenant themselves because they filed the Application. Further, the first line of the Details of Cause section of the Notice states, "Tenant has repeatedly disturbed the quiet enjoyment of his neighbours." The Tenant acknowledged receiving the Notice. The Tenant obviously received the Notice because the Tenant disputed the Notice. The Tenant only had to read the first line of the Details of Cause section of the Notice to know that the hearing would be about them disturbing their neighbours. Further, the RTB sent the Tenant a package about the hearing July 28, 2022, which would have explained that the Tenant could call witnesses at the hearing if they wished.

In relation to the Tenant's position that the allegations of L.M. are far fetched, I have not relied on the allegations that the Tenant took issue with.

As stated, I am satisfied the Landlord had grounds to issue the Notice. The Notice complies with section 52 of the *Act*. I uphold the Notice and dismiss the Tenant's dispute of the Notice without leave to re-apply.

Pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession.

I have considered RTB Policy Guideline 54 which states:

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances **have generally been set for two days after the order is received**. However, an arbitrator **may** consider extending the effective date of an order of possession beyond the **usual two days** provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the **tenant provides evidence** that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.
(emphasis added)

I find a two-day Order of Possession appropriate. This has not been a lengthy tenancy. The Tenant did not submit documentary evidence to show the effective date should be extended. The Tenant is disturbing others in the building. The Landlord has already waited five months for this tenancy to end and it is ending based on the valid Notice.

I note that the Tenant stated at the end of the hearing that they felt I had convinced the Landlord to seek a two-day Order of Possession. This was not the purpose of the information I provided to the Landlord. I told the Landlord even if an Order of Possession is issued for a specific time period or date, the Landlord can choose to wait longer to serve it on the Tenant or enforce it in the BC Supreme Court. The purpose of this information was to let both parties know they could agree on a different date than that noted on the Order of Possession to end the tenancy if the Notice was upheld. I did tell the Landlord they cannot wait months to enforce an Order of Possession because at some point enforcing it will become problematic due to delay.

The Landlord is issued an Order of Possession effective two days after service on the Tenant.

Given the Tenant has not been successful in the Application, I decline to award the Tenant reimbursement for the filing fee.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and 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 *Act*.

Dated: December 09, 2022

Residential Tenancy Branch