



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

The Tenant seeks an order pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”) cancelling a One-Month Notice to End Tenancy signed on October 13, 2022 (the “One-Month Notice”).

S.R. appeared as the Tenant’s agent. S.R. advised that he is the Tenant’s brother and that his brother could not attend the hearing due to mental health challenges. W.F. appeared as the Landlord’s agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the One-Month Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in November 2014.
- Rent of \$1,250.00 is due on the first of each month.
- A security deposit of \$562.50 was paid by the Tenant.

I am provided with a copy of the tenancy agreement by the Tenant. The Tenant's agent advises that his brother had lived at another rental unit in the same building prior to the current tenancy such that he has been residing at the property for approximately 16 to 18 years.

The Landlord's agent advises that the notice to end tenancy was posted to the Tenant's door on October 11, 2022. I enquired with the Landlord's agent how the One-Month Notice, which was signed on October 13, 2022, could be posted to the Tenant's door on October 11th. The Landlord's agent advises that the copy of the notice to end tenancy in front of her was signed on the 11th. The Landlord failed to provide a copy of the notice to end tenancy in its evidence.

The Tenant provides a copy of the One-Month Notice in his evidence. The Tenant's agent that the Tenant only received the One-Month Notice and that he found it on his door on the 13th. The One-Month Notice lists that it was issued on the basis that the Tenant put the Landlord's property at significant risk, describing the cause as follows:

On October 4th, 2022 the tenant has hardwired the back of the hallway light for power. It tripped the fire alarm and the fire department showed up.

This is the second time that it happened and the tenant put the building at risk.

I asked the Landlord's agent to confirm the cause stated in the notice to end tenancy before her. She confirmed the cause and the incident as listed in her notice to end tenancy were the same as those listed in the One-Month Notice. The Landlord's agent further advised that she was not personally involved with the service of the One-Month Notice.

The Landlord's agent advises that on October 4, 2022 smoke had triggered the fire alarm at the residential property after the Tenant had hardwired an extension cord to a power cable that supplied electricity to lighting in the hallway of the common area at the property. I am told the building was evacuated though no fire appears to have been triggered following the incidence. The Landlord's evidence includes photographs of the DIY electrical work alleged to have been done by the Tenant, which shows that a hole had been cut into the wall, a wire pulled from the wall, and an extension cord, after having been cut, was wired to the cable that had been pulled from the wall. The Landlord's agent further advises that the Landlord had to retain an electrician to repair the electrical work and I am directed to an invoice totalling \$210.00 for this repair. The invoice also notes the Tenant's rental unit and the scope of the work involved removal of illegal wiring installed from the common area hallway light circuit.

The Landlord's agent indicates that a similar incident occurred in 2019 involving an extension cord wired to an exterior light post at the rear of the property. I was directed to a letter dated April 24, 2019 in the Landlord's evidence. The Tenant's agent indicates he has no knowledge of the 2019 incident.

The Tenant's agent did not dispute what had occurred on October 4, 2022 or that the Tenant was responsible for undertaking the electrical work. The Tenant's agent says that the Tenant had lost power service and that he had been without power for some 9 months immediately prior to October 4, 2022. The tenancy agreement shows that the Tenant is responsible for paying for electricity. I am told by the Tenant's agent that the Tenant has mental health struggles which has been adversely impacted by the isolation brought about by the pandemic. The Tenant's agent says that the Tenant suspended use of his bipolar medication and has begun to abuse other substances since suspending the use of his medication.

The Tenant's agent argued that the Tenant was no longer a risk to the property, that he has taken over the Tenant's electrical account such that he will continue to pay for his brother's electricity, and that his brother has been making use of supports and treatment to address his mental health. The Tenant's agent provides written submissions indicating he is the Tenant's attorney and the evidence includes a screenshot showing that the Tenant's agent had taken over the account for the rental unit as of November 2022.

I am also directed to a letter in the Tenant's evidence from his psychiatrist noting the Tenant was first assessed on October 31, 2022 and his opinion diagnostic opinion of the Tenant. The letter from the psychiatrist also notes the following:

[The Tenant] has collaboratively developed a treatment plan in bettering his mental health and addressing his substance use disorder. The treatment plan consists of restarting medication for his mental health and looking into treatment for his alcohol and drug use, and then eventually looking into dialectic behavioural therapy.

At the time of the assessment with [the Tenant], he does appear motivated for change and for bettering his mental health concerns.

I have redacted the Tenant's name from the passage above in the interest of his privacy.

The Tenant's agent advises that the Tenant has been attending alcoholics anonymous to address his alcoholism. The Tenant's agent further advises that in the lead up to this hearing, the Tenant's mental health has deteriorated, which included an attempted suicide. I am told by the Tenant's agent that the Tenant was released from hospital two days ago. It was argued that if the notice is upheld, the Tenant would likely end up homeless. It was finally argued that the Landlord is motivated to raise rent, which the Landlord's agent denies.

The parties confirm the Tenant continues to reside within the rental unit.

Analysis

The Tenant seeks an order cancelling the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to s. 47(1)(d)(iii) of the *Act*, which is due to the Tenant, or a person permitted onto the property by the Tenant, has put the Landlord's property at significant risk. Upon receipt of a notice to end tenancy issued under s. 47 of the *Act*, a tenant has 10 days to dispute the notice as per s. 47(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

In this instance, I accept that the One-Month Notice, that being the one signed on October 13, 2022, was the only one that had been served. The Landlord's agent mentioned a notice to end tenancy signed October 11, 2022. However, that notice was not served as the Tenant's agent say only one notice had been served, which was put into evidence by the Tenant. Further, the notice to end tenancy mentioned by the Landlord's agent has the same cause stated as the One-Month Notice provided to me by the Tenant such that the issue raised by both, being the October 4, 2022 incident, is the same. I accept the evidence provided to me by the Tenant's agent and find that the One-Month Notice was served posted to the Tenant's door on October 13, 2022, which is in accordance with s. 88 of the *Act*.

I accept that the Tenant received the One-Month Notice on October 13, 2022. Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find the Tenant filed his application on October 20, 2022 such that it was filed within the 10 days permitted to him under s. 47(4) of the *Act*.

There is no dispute that the Tenant wired an extension cord to an electrical cable after cutting a hole in the wall and that this resulted in the fire department attending the residential property on October 4, 2022. Though this was not confirmed by the Tenant's agent, I accept that smoke had been created due to the wiring done by the Tenant. It goes without saying that it was highly improper for the Tenant to do as he did. It is fortunate that the Tenant was not electrocuted or that the building's other residents were not displaced by a fire. I accept that the wiring was illegal in that it did not meet code, which is what I took as the meaning of the note in the electrician's invoice. Despite this, the Tenant's agent argues that the issues have been addressed such that there is no longer a risk to the Landlord's property.

The Tenant's argument is akin to that raised by the tenant in *Senft v Society of Christian Care of the Elderly*, 2022 BCSC 744 ("*Senft*"). The tenant in *Senft* received a One-Month Notice to End Tenancy on the basis that they seriously jeopardized the health, safety, or lawful right of another occupant or the landlord, put the landlord's property at significant risk, and had not repaired damage within a reasonable time. Extensive waste and damage to the rental unit was noted by the landlord in *Senft* after a rental unit inspection was conducted. As noted in the decision, the tenant in *Senft* had poor health and had difficulty housekeeping, receiving assistance from neighbours and a private cleaning service. Due to the pandemic, his cleaning services stopped. At the hearing before the Residential Tenancy Branch, the notice to end tenancy was upheld on the

basis of that the tenant put the landlord's property at significant risk and that the tenant seriously jeopardized the health, safety, or lawful right of another occupant or the landlord.

Submissions were made by the tenant in *Senft* to the effect that they were ill and unable to clean as required but that they had retained new cleaning services such that the issue had been resolved after the notice to end tenancy was served. This argument was rejected by the arbitrator in *Senft*, who noted that it was not for them to make a finding that the tenant will maintain the rental unit in the future but whether the landlord had cause to issue the notice to end tenancy in the first place.

On judicial review, the original decision in *Senft* was set aside and the matter remitted back to the Residential Tenancy Branch for reconsideration. The reviewing judge found the arbitrator had made an error by failing to consider the protective purpose of the *Act* when interpreting s. 47 and failed to consider the tenant's post-notice conduct, noting at para 39 "post-notice conduct is relevant when deciding whether an end to tenancy was justified or necessary in the context of the protective purposes of the RTA."

Looking to the present circumstances, there can be little doubt that the Tenant put the Landlord's property at significant risk. However, the incident took place within the context of a long-term tenancy that started in 2014. I accept that the Tenant has been a resident of the building, however, for longer, residing there for approximately 16 or 18 years. Throughout that whole period, the sole incident which is said to give rise to ending a long-term tenancy was the incident of October 4, 2022. Though the previous incident from 2019 was mentioned, it does not appear the property was put at risk other than the unlawful taking of electricity.

I accept that the Tenant has mental health struggles, which were exacerbated by the isolation brought about by the pandemic. In this context, the Tenant's electricity was cut off, presumably due to a delinquent account, and the October 4, 2022 incident took place after he was without power for 9 months. I accept that the circumstances that led to the October 4, 2022 incident were isolated in that they were brought about by a deterioration in the Tenant's mental health and his power being cut off for a significant period of time. The Tenant's evidence includes a screenshot showing the service has been put into his brother's name as of November 2022, such that I find it is unlikely the Tenant will illegally wire the premises as he has electrical service. I accept that the Tenant's brother is unlikely to suspend the account given what had occurred on October

4, 2022 and note that he identifies himself as the Tenant's attorney in written submissions provided to me.

I further accept the evidence presented to me in the form of the letter from the Tenant's psychiatrist that he is getting assistance in treating his mental health and has resumed taking his medication. I am told and accept that the Tenant is addressing his alcoholism and that he is getting assistance from social supports as necessary. I am encouraged by these steps and hope the Tenant continues to make use of the supports available to him to address his ongoing challenges.

Though the incident of October 4, 2022 would generally warrant ending a tenancy, I find that the circumstances leading to the incident have been addressed such that the Tenant no longer poses a significant risk to the property. In light of the protective purpose of the *Act*, I find that it would be inappropriate to end a long-term tenancy over an isolated incident whose causes are no longer in issue. I grant the Tenant's application and cancel the One-Month Notice, which is of no force or effect.

Conclusion

The One-Month Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

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 1, 2023

Residential Tenancy Branch