



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC PSF LRE OLC FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on February 10, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice);
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 am on April 14, 2023, and was attended by the Tenant and the Landlord. All testimony provided was affirmed. Although the Landlord stated that the Notice of Dispute Resolution Proceeding (NODRP) was not served on time, they agreed that the hearing should proceed as scheduled. As the parties acknowledged receipt of each other's documentary evidence, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over

me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

In their Application, the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure) states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims are not sufficiently related to the One Month Notice, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the One Month Notice and recovery of the filing fee.

Preliminary Matter #2

Although the parties engaged in settlement discussions pursuant to section 63 of the Act, a settlement agreement could not be reached. As a result, I proceeded with the hearing and rendered a decision under the authority granted to me by the Director of the Residential Tenancy Branch (the Branch) under section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an order of possession?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Although the parties acknowledged that no tenancy agreement was in place at the time they moved in, they agreed that a tenancy agreement under the Act was entered into sometime thereafter, that a tenancy under the Act currently exists between them, and that rent is due on the 15th day of the month.

The parties agreed that the One Month Notice was sent to the Tenant by registered mail on February 2, 2023, and the Tenant acknowledged receipt four days later, on February 6, 2023. The One Month Notice is signed and dated February 1, 2023, has an effective date of March 15, 2023, and gives the following reasons for ending the tenancy:

- The Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property;
 - The Tenant or a person permitted on the residential property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
 - The Tenant or a person permitted on the property by the Tenant has put the Landlords' property at significant risk;
 - The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property;
- and

- The Tenant or a person permitted on the residential 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 property.

In the details of cause section of the One Month Notice it states the following:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s): Violent and threatening behaviors. Damage to my property and belongings. Broken our agreement and abused my niceness. Threatening my son, saying you are going to punch him out has caused stress and trauma to his well being. Chasing after me to swear and threaten me has cause anxiety and stress in my own home. I have video and dash camera footage plus witnesses of you chasing me out of yard swearing and waving your hand to me. You have over

Stayed your welcome. You have plenty of time to find a place.

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The Landlord stated that the Tenant had uttered threats towards them, their son, and their friend, that that Tenant has been repeatedly banging on the walls and yelling and swearing at their children through the walls, and has caused damage to both the rental unit and the Landlord's possessions. The Landlord also argued that the Tenant is not keeping the rental unit clean and tidy, resulting in mould. The Landlord submitted documents including but not limited to photographs, dash camera footage, several videos, copies of text messages, and sworn affidavits from themselves, their children, and two witnesses HT, and AN.

The Tenant denied uttering any threats and characterized threats as needing to involve the threatened use of a weapon or bodily harm. The Tenant stated that the One Month Notice has been issued by the Landlord due to ongoing disputes between them, not for the reasons stated on the One Month Notice, which are false. However, the Tenant acknowledged banging on the walls and yelling at the Landlord's children through the walls due to noise disturbances late at night and very early in the morning, stating that the Landlord's children have "no respect" and that "sometimes you just react".

While the Tenant acknowledged attempting to find a vacuum belonging to the Landlord to "hold hostage" until the Landlord returned a space heater allegedly taken from the

rental unit without their consent, they denied damaging the vacuum or any of the Landlord's possessions. They also acknowledged being untidy but denied the Landlord's allegations that there was mould or damage to the rental unit. The Tenant submitted documents including but not limited to copies of text messages, a notice of entry, and the One Month Notice.

Analysis

Based on the affirmed testimony of the parties, I am satisfied that a tenancy to which the Act applies exists between them and that the Tenant was served with the One Month notice in accordance with the Act on February 6, 2023. I am also satisfied that the Tenant disputed the One Month Notice on time.

Is the Tenant entitled to cancellation of the One Month Notice?

Although the Tenant argued that the One Month Notice was served in retaliation due to ongoing disputes with the Landlord about space, wifi, and entry to the rental unit, I am not satisfied that this is the case. The Landlord submitted compelling evidence in the form of dash camera footage, videos, and five sworn affidavits from their children, two witnesses, and themselves, that demonstrate to my satisfaction that the Tenant has engaged in aggressive and threatening behaviour towards the Tenant and their children. At the hearing the Tenant also acknowledged banging on the walls and yelling at the Tenant's children through the walls.

Based on the above, I am satisfied on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property and seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. As a result, I find that the Landlord has grounds to end the tenancy pursuant to sections 47(1)(d)(ii) and (iii) of the Act. I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

Is the Tenant entitled to recovery of the filing fee?

As the Tenant's Application is dismissed, I decline to grant them recovery of the filing fee.

Is the Landlord entitled to an order of possession?

As the Tenant's Application seeking cancellation of the One Month notice is dismissed, I am satisfied that the One Month Notice was properly served, and I am satisfied that it complies with section 52 of the Act, I find that the Landlord is entitled to an order of possession pursuant to section 55(1) of the Act. As the effective date of the notice has passed, I grant the order of possession effective two days after service on the Tenant, pursuant to sections 55(1) and 68(2)(a) of the Act.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice and recovery of the filing fee is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I grant an order of possession to the Landlord effective **Two Days after service on the Tenant**. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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

Dated: April 18, 2023

Residential Tenancy Branch