



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord.

The tenant and the landlord's agent (landlord) attended the hearing. All parties were affirmed. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) . However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

At the outset of the hearing, the tenant requested an adjournment of the hearing as the tenant was dealing with a personal matter in January 2023 and as he did not have time to seek poverty counsel. The tenant did not submit documentary evidence to support these submissions or what efforts have been made to seek poverty counsel.

In considering whether or not to grant the landlord's request for an adjournment, Rule 7.9 gives the Arbitrator authority to adjourn the dispute resolution proceeding to a later time at the request of either party or of the Arbitrator's own initiative.

Under 7.9, I declined to adjourn the matter to another date, as I have considered the serious nature of the landlord's allegations in their 1 Month Notice. I found this would prejudice the rights of the landlord should the allegations proved to be substantiated, in consideration that the reconvened hearing could potentially be scheduled months away.

As another preliminary matter, the tenant filed a significant amount of evidence with Service BC on March 31, 2023. Due to the file size, Service BC was unable to upload the evidence and therefore it was mailed. This evidence was uploaded onto the RTB digital file at 9:20 am on April 13, 2023, for the hearing at 9:30 am on that date. I did not have an opportunity to review that evidence in the 10 minutes before the hearing.

Apart from this, I have now had the opportunity to review this evidence and find that most of it pertained to the 3 recent past dispute resolution proceedings between the parties and is cumulative to these past disputes. I found little evidence relevant to only this current dispute. Between the landlord and the tenant, I received the Decisions from the 3 past disputes proceedings.

I note that as the great majority of the evidence was available for filing at the time of the tenant's application on February 20, 2023, I find this evidence did not comply with Rule 2.5 and was filed late.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the 1 Month Notice?

Should the Notice be cancelled or enforced?

Background and Evidence

The tenancy began on August 31, 2018 and monthly rent is \$1,100. The rental unit is one side of a duplex and there are tenants in the other side of the duplex.

Filed in evidence was the 1 Month Notice. The Notice was dated February 8, 2023, for an effective move-out date of March 31, 2023. The tenant confirmed receipt of the Notice on February 8, 2023 when it was attached to the door.

The causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Causes portion of the Notice, the landlord wrote the following:

Details of the Event(s):
Tenant refuses to provide vital information in regards to his medicinal grow op, to the landlord, so they can obtain Insurance for their property. He has been asked for this by landlord, Agent for the landlord and landlord's lawyer - He still has not complied & the owner cannot obtain Insurance -
He has seriously jeopardized the lawful right of the landlord, by not providing this information, to obtain insurance -

[Reproduced as written]

Pursuant to Rule 6.6 and 7.18, the landlord proceeded first in the hearing to support the Notice.

The landlord submitted that the tenant has been growing medical marijuana in the rental unit without a valid license to do so. This stems from the fact that the tenant does not have the owner's consent to grow medical marijuana, according to the landlord.

Apart from that, the tenant has been asked multiple times to answer two questions required by the insurance company in order to insure the residential property. To this point, the tenant refuses to answer these questions, and as a result, the homeowner

currently does not have insurance on the property, putting the property at major risk as well as the two sets of tenants.

The tenant has been asked in writing by the landlord and the landlord's legal counsel to answer whether the indoor marijuana plants are grown using a hydroponic set-up and whether there are solvents and chemicals used to extract from the marijuana plants to produce cannabis.

The landlord submitted that due to the tenant's refusal, their insurance company is unable to find an insurance company willing to insure the residential property. Currently there is only one insurance company in Canada willing to insure the property, according to the landlord, but will not do so due to the lack of cooperation from the tenant.

Evidence filed by the landlord included the written requests to the tenant, from the landlord and their legal counsel, communication between the insurance company and the landlord, and a copy of an application for a medical marijuana license showing property owner's approval is required.

Tenant's response –

The tenant testified that every single time the landlord asks for the information, he has informed them that he does not have to disclose private information. Additionally, he has informed the landlord in July 2022 that he found an insurer locally who would insure the residential property.

The tenant claimed this is a second attempt to evict him due to his growing the medicinal marijuana plants and the first time was unsuccessful.

The tenant submitted that although his medical marijuana license shows as being expired, he has applied for a renewal in time, but the processing was delayed by Health Canada. However, Health Canada has informed him that his license was grandfathered, according to the tenant.

The tenant requested that if I did grant an order of possession, that it be made effective 3 months out, in order to protect his marijuana plants.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

While I have reviewed the extensive evidence submitted prior to the hearing and the oral evidence, I refer to only the relevant evidence regarding the facts and issues in determining this Decision.

Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not. A landlord does not have to provide sufficient evidence for all causes, only for one, to meet their burden of proof.

I find that Notice to be completed in accordance with the requirements of section 52 of the Act.

After considering the relevant evidence and submissions, I find that the landlord has provided sufficient evidence to prove at least two of the causes listed on the 1 Month Notice. I base my decision on the following.

I find the evidence shows that that the tenant was given multiple written requests to answer two simple and straight forward questions as to how he processed the marijuana plants grown inside the rental unit and he refused. I find the landlord submitted sufficient evidence through their documentary evidence that the tenant's refusal has resulted in the landlord being unable to obtain insurance for the residential property.

As the residential property is currently uninsured due to the tenant's refusal, I **find** the tenant has not only seriously jeopardized the lawful right of the landlord of having their property insured, but I also **find** the tenant's refusal has put the landlord's property at significant risk. Common sense dictates that if something happens to the home, such as destruction by fire, the owner is left with no asset.

In addressing the tenant's claim that he does not legally have to disclose private information, I find he failed to demonstrate the two questions as noted above were in the realm of protected private information. Apart from that, any concerns the tenant has, I find, does not override the landlord's right to have their property insured. If the

tenant did not want to disclose this information, he had the right to serve a notice to vacate.

In addressing the tenant's claim that he found a local insurer last year, I find the tenant has no right to interfere with how a landlord conducts their business of being a landlord. This includes finding their own insurance for the residential property.

Taken in totality, I find the landlord has submitted sufficient evidence to prove two of the above noted causes on the Notice, as I find the tenant's refusal to answer the two questions required by the insurer seriously jeopardized the lawful right of the landlord and has put the landlord's property at significant risk.

For this reason, I **dismiss** the tenant's application requesting cancellation of the Notice, **without leave to reapply**, as I find the 1 Month Notice dated February 8, 2023 valid, supported by the landlord's evidence, and therefore, enforceable. I therefore uphold the Notice and I **order** the tenancy ended on the effective date of that Notice, or March 31, 2023.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable **two (2) days after service on the tenant**. I do not agree with the tenant's request to extend the effective date of a possible order of possession for 3 months, as the landlord's property is currently uninsured.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the 1 Month Notice is dismissed, without leave to reapply.

I ordered the tenancy ended on March 31, 2023.

The landlord has been issued an order of possession for the rental unit, effective two days after service on the tenant.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 16, 2023

Residential Tenancy Branch