



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RR, RP, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on December 6, 2022, and a subsequent amendment to the Application (Amendment) dated January 3, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice);
- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlord to complete repairs; and
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement.

The hearing was convened by telephone conference call at 11:00 am on April 14, 2023, and was attended by the Tenant, the Tenant's support person LS, the Landlords, and legal counsel for the Landlords (the Lawyer). All testimony provided was affirmed. As the Landlords acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) and Amendment, and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, 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 pursuant to the Rules of Procedure, 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 sent to them in the manner requested at the hearing.

Preliminary Matters

Preliminary Matter #1

In their Application and Amendment, 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:

- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlord to complete repairs; 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 a One Month Notice.

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, are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlords' Lawyer stated that on November 10, 2022, the Landlords became aware that the Tenant was using portable heaters as their main heat source, rather than the baseboard heaters and the fireplace, as the Tenant advised them that the baseboard heaters did not work. The Lawyer stated that the Landlords arranged for an inspection of the baseboard heaters and fireplace, which took place on November 30, 2022, where it was determined by an electrician that the baseboard heaters and the fireplace were fully operational and sufficient to adequately heat the rental unit. The Lawyer stated that the Landlords, who were present during this inspection, concluded that the Tenant was not using the baseboard heaters and fireplace as they were blocking these heat sources with their possessions.

The Lawyer stated that the Tenant was served with a caution notice on December 3, 2022, advising them that they were in breach of section 47(1)(d) of the Act due to the fire safety risk posed by the use of space heaters, the proximity with which they are storing their possessions in relation to the fireplace and baseboard heaters, and the use of an extension cord through an open window to power a cage light on the deck. The Lawyer stated that the caution notice advised the Tenant that all heating appliances needed to be free from obstructions in every room, provided the amount of clearance required for each appliance, advised the Tenant that they are to use the installed heating appliances to heat the rental unit and that they are to leave all breakers in the on position, remove the exterior lighting on the deck, and stop running an extension cord out the window and using portable space heaters. The Tenant was given until December 27, 2022, to comply.

The Lawyer stated that the Tenant was served with a subsequent caution notice on December 9, 2022, advising them that they were in breach of section 47(1)(d) of the Act and had breached a material term of the tenancy agreement, because they had failed to comply with a previous notice issued on November 19, 2022, directing them to move or remove possessions such as pallets, bikes, totes, and kayaks, from their deck, a shed, and common areas, by December 7, 2022. The Lawyer stated that they were given until December 27, 2022, to comply, and given notice that the premises would be inspected at 10:00 am on December 28, 2022, to ascertain if the Tenant had complied.

The Lawyer stated that the Landlords inspected the property and rental unit on December 28, 2022, and determined that the Tenant had failed to comply with the notices issued on November 19, 2022, December 3, 2022, and December 9, 2022, and that they had therefore breached a material term of the tenancy agreement and were placing the property and its occupants at significant risk by failing to keep the property clean and tidy, which is attracting rodents, and using electricity in a manner that presents a serious fire risk. As a result, the Lawyer stated that the Landlords served the Tenant with the One Month Notice, which was posted to the rental unit door on December 28, 2022. At the hearing the Tenant confirmed receipt on that date.

The One Month Notice in the documentary evidence before me is signed and dated December 28, 2022, has an effective date of January 31, 2022, and gives the following grounds for ending the tenancy:

- The 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 Landlords;
- The Tenant or a person permitted on the property by the Tenant has put the Landlords' property at significant risk; and
- The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given.

A detailed timeline of events and copies of the above-mentioned notices, the One Month Notice, documentation from the Landlords' home insurance provider, information regarding the fire risk posed by portable heaters, heating equipment guidelines, photographs, the electrical inspection report, a police report, a video recording, the tenancy agreement and move-in condition inspection report, written submissions, and copies of correspondence between the parties was submitted by the Landlords and the Lawyer in support of their arguments.

The Tenant argued that under their tenancy agreement, which was entered into by the previous owners, they have exclusive use and possession of the back yard from gate to gate, and therefore they are not improperly storing any possessions in common space as alleged. The Tenant also denied that there is a current rodent issue at the property or that they are the cause of any such issue. The Tenant stated that their deck is clean and tidy, that there are no rodent attractants there, and that the last time there was rodents on the property was several years ago.

The Tenant stated that the issue with regards to the exterior cage light and extension cord is resolved as it was used to keep a humming bird feeder warm in the winter, and has since been removed. Although the Tenant acknowledged using space heaters in the rental unit, they state that they are not a fire safety risk as they have timers, and are not used when they sleep or are away from the rental unit, something the Landlords specifically disputed. The Tenant also argued that the heating appliances in the rental unit are insufficient to keep it warm, and that the fireplace is decorative only.

Although the Tenant stated that they have complied with the caution notices, they acknowledged that this was not until after they were served with the One Month Notice, and that they have not moved their bed away from the baseboard heater as there is insufficient room to do so.

Although much of the documentary evidence submitted by the Tenant related to claims that were dismissed with leave to reapply, the Tenant submitted photographs, a letter to the Landlords dated November 17, 2022, and summaries of conversations, among other things, for my review and consideration.

The parties also attacked each other's credibility and the Tenant argued that the One Month Notice was served in retaliation of their original Application filed on December 6, 2022, seeking a rent reduction, repairs, and an order for the Landlords to comply with the Act, regulations, and tenancy agreement. The Lawyer denied that this was the case, stating that it would not be logical to reach this conclusion as the Tenant was served with notices regarding the same issues covered in the One Month Notice on November 19, 2022, and December 3, 2022, which are prior to the filing of the Tenant's Application. As rent has been paid for the month of April, the Landlords indicated that they would like an order of possession for the end of April 2023.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, I am satisfied that a tenancy to which the Act applies exists between the parties and that the Tenant was served with the One Month notice in accordance with the Act on December 28, 2022. 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 to their filing of the original Application on December 6, 2022, I disagree. It is clear from the documentary evidence, specifically the November 19, 2022, and December 3, 2022, notices that the Landlords took issue with the way the Tenant was storing their belongings outside, their use of space heaters, and the proximity with which they were storing their belongings to the heating appliances in the rental unit prior to December 6, 2022. I also note that the Tenant acknowledged receiving the caution notices and failing to take action with regards to them until after the One Month Notice, which was based on these same reasons, was served. I therefore dismiss this allegation as without merit. I also dismiss the Lawyers argument that the Tenant breached a material term of the tenancy agreement as I am not satisfied that the written tenancy agreement, a copy of which was submitted for my consideration by both parties, contains any material terms as set out in Residential Tenancy Policy Guideline (PG) #8.

However, for the following reasons I am still satisfied that the Landlords have grounds to end the tenancy pursuant to sections 47(1)(d)(ii) and (iii) of the Act. I am satisfied by both the photographs provided by the Landlords and the testimony of the Tenant, that the Tenant is using space heaters instead of the heating appliances installed in the rental unit, which makes the home ineligible for insurance renewal by the Landlord's home insurance provider, that the use of space heaters is a significant fire risk to the property, even if they have timers and are not being used when the Tenant is asleep or not home, that the Tenant is storing personal items, including but not necessarily limited to a bed, too close to heating appliances, such as baseboard heaters, which presents a fire risk. I am also satisfied by the electrical report that the installed heating appliances are in good working order and sufficient to properly heat the rental unit, despite the Tenant's testimony to the contrary, and that they are therefore using space heaters not because the heating appliances are broken or insufficient, but because they cannot use the installed heating appliances due to how they have placed their possessions in the rental unit.

Based on the above, I am satisfied that there is a real and significant safety risk posed to the property by the Tenant, and I therefore dismiss their Application seeking cancellation of the One Month Notice without leave to reapply.

Are the Landlords entitled to an order of possession?

As I am satisfied that the One Month Notice complies with section 52 of the Act, I find that the Landlords are 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 April 30, 2023, pursuant to section 68(2)(a) of the Act and as per their request at the hearing.

Conclusion

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

Pursuant to sections 55(1) and 68(2)(a) of the Act, I grant an order of possession to the Landlords effective at **1:00 P.M. on April 30, 2023**, after service of this order on the Tenant. The Landlords are 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 17, 2023

Residential Tenancy Branch