



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, CNOP, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 17, 2022, wherein the Tenant sought an Order canceling a 1 Month Notice to End Tenancy for Cause issued on November 7, 2022 (the "Notice") and recovery of the filing fee.

The original hearing occurred on April 3, 2023. The Tenant did not attend the hearing on April 3rd and the Landlord was granted an Order of Possession. The Tenant applied for review consideration of the Decision on the basis she could not attend the hearing for reasons which were both outside her control and unanticipated. By Decision dated April 5, 2023, the Tenant was successful in this application and a new hearing was ordered.

The New Hearing was scheduled for teleconference before me at 9:30 a.m. on July 11, 2023. Both parties called into the hearing. The Landlord's spouse A.D. also called into the hearing. She identified herself as a Landlord; the Tenant took no issue with this. The parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have

reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord, A.D., testified as follows. She confirmed that the tenancy began October 17, 2012. Monthly rent is \$2,380.00 and the Tenant paid a \$1,090.00 security deposit.

The Landlords issued the Notice on November 7, 2022. A.D. confirmed it was personally served on the Tenant on November 7, 2022.

The Landlord testified that the reasons giving rise to the end of the tenancy were as follows:

- The Tenant and her guests/occupants have been threatening the neighbours. In particular and on July 11, 2022 the neighbour made a noise complaint about a party. The police attended following which, the Tenant, or a guest of the Tenant, threatened the neighbour as follows: "if you report us again I will burn your house down". The neighbours called the police and informed the Landlord.
- The Landlords have been dealing with constant disturbances, including loud partying, people coming and going.
- The neighbours feel very unsafe due to the multiple police attendances. In addition to the August 2022 attendance as a result of the alleged threat, in April the police attended on two other separate occasions:

- The Landlord received a message from the neighbour that there was a fire at the rental property in one of the sheds which resulted in the fire department attending. The Tenant never informed the Landlord about this and the Landlord is currently unable to obtain information about the fire due to freedom of information.
- On April 3, 2023 B.D. went to the residence to collect the rent. There were numerous police cars there, and a tow truck was towing a vehicle away.
- The Tenant made false allegations about the Landlord. On April 5, 2023 the Landlord went to serve the Order of Possession. He knocked on the door, no one came and he could hear voices. He knocked on the window and served them the Order. A few hours later a police officer called and informed the Landlords that the Tenant had called the police to report him as a “peeping Tom”.
- The tenant changed the locks without the Landlords permission. The Landlord hired a locksmith to change the locks and the Tenant refused the locksmith entry.
- The Tenant also refuses the Landlord access to inspect the furnace.

In support the Landlord submitted a letter from the neighbours; however, they did not include their name or contact information. A.D. stated this was because the Tenant and her guests have threatened the neighbour in the past.

The Landlord stated that they are very concerned about the constant police presence and feel that the tenancy cannot continue. She stated that they can't speak to the Tenant and resolve these issues because the relationship has deteriorated to the point where the tenancy is not workable. The Landlord noted that the Tenant refuses them access and has made false allegations against the Landlord.

In response to the Landlord's testimony and evidence the Tenant testified as follows. In terms of the “supposed threat” the Tenant stated that she was not aware of this threat until shortly before the hearing when she received new evidence from the Landlord. She also stated that it appears that this was not reported to the Landlords until August 2022. The Tenant also denied making any such threat. The Tenant also stated that the police never contacted her about this.

In terms of the Landlord's allegation that the Tenant has received noise complaints, the Tenant confirmed that the police attended the house in July of 2022 due to a party. She stated that the police have never attended for a noise complaint other than this date.

The Tenant confirmed the police have attended the rental unit in the spring of 2023 due to the neighbours calling them.

The Tenant stated that she feels that the Landlords are trying to cause these problems because she refused to pay more rent.

In terms of the Landlords' allegation regarding a fire, the Tenant stated that she was not at the property, however, the babysitter contacted the Tenant and informed her that the police had attended due to a "suspicious fire", but when the police inspected there was no such fire. Again, the Tenant noted this was a complaint by the neighbours.

The Tenant acknowledged that there is conflict between her and these neighbours. She stated that they appear to have conflict with others as well, as they call the police and the bylaw enforcement officers on others in the neighbourhood. The Tenant claimed that she has a good relationship with the other neighbours.

In terms of the Landlord's allegation that she refuses the Landlord access to the rental unit, the Tenant confirmed that she installed a key pad and security system 7 years ago. She claimed that the Landlord showed up at the property 7 times unannounced and she denied them, and the locksmith entry because they did not follow the appropriate steps in terms of giving her notice.

The Tenant further confirmed that she denied the Landlord access to service the furnace claiming that during the entire tenancy she has been servicing the furnace.

The Tenant stated that it was her information that her babysitter called the police to report the Landlord as a "peeping Tom" as she saw a man knocking on the window.

The Tenant reiterated that this is all about the Landlord wanting more rent. She stated that in March of this year the Landlord tried to force her to sign a new lease agreement. They offered to withdraw the Notice if she agreed to an increase of \$450.00. When the Tenant refused the Landlord provided evidence about the "supposed threat".

In reply the Landlord confirmed that they tried to have the Tenant sign a new lease agreement in March of 2023. The Tenant wanted to add new occupants and the Landlord was fine to continue with the original agreement but wanted a new tenancy agreement if it included more occupants. The Landlord confirmed she was content to include more occupants but wanted them to pay more rent. The Landlord noted that they never raised the rent in 12 years.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Act*. Section 47 of the *Act* allows a landlord to end a tenancy for cause and reads in part as follows:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

(2)A notice under this section must end the tenancy effective on a date that is

(a)not earlier than one month after the date the notice is received, and

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

In this case the Landlord alleged the Tenant had:

- allowed an unreasonable number of occupants in the rental unit;
- had significantly interfered with or unreasonably disturbed another occupant or the landlord; and/or
- had put the landlord's property at significant risk.

On the Notice the Landlord provided the following additional details:

- Having occupant living in residence that is not on the rental agreement;
- Multiple calls from RCMP for disturbances.
- Multiple complaints from neighbors, threatening neighbors
- Irresponsible use of property—recreational use of roofing.

The Landlord's allegations that the Tenant has refused them entry to the rental unit was not included on the Notice. As such, the Tenant was not given appropriate notice of this allegation. One of the principles of natural justice is that a party to a dispute has the right to know the claim against them and the right to receive and meaningfully respond to any evidence filed by the claiming party. It is imperative that landlords include such allegations on the notice to give the tenants legal notice of the claim. In any case, I am not satisfied, based on the evidence before me that the Tenant has put the Landlord's property at significant risk by denying them entry to the rental unit. The Tenant is cautioned that she must give the Landlords the code and keys to the rental unit and must permit them access to the rental unit as provided for in section 29 of the *Act*.

I am not satisfied, based on the evidence before me that the Tenant has allowed an *unreasonable* number of occupants in the rental unit. The evidence before me suggests the Landlord was content for the Tenant to have the requested additional occupants, provided they pay additional rent.

At the hearing before me the Landlord testified that the Tenant has conflict with one of the neighbours. The calls to the police appear to be from the neighbour and related to this conflict. The evidence before me confirms there was one such call before the Notice was issued, a noise complaint, and three more in the spring of 2023 due to conflict with the neighbour.

At the hearing on April 3, the Landlord informed Arbitrator Arnsdorf that the Tenant threatened to burn down the neighbours house. She repeated this allegation when testifying before me. This specific allegation was not made on the Notice as the Notice was issued in November, some five months before the alleged threat was made.

The evidence confirms that shortly before the original hearing and in the spring of 2023 the Landlord and Tenant discussed continuing the tenancy. During her testimony the Landlord confirmed that at that time she was agreeable to the Tenant having more occupants in the rental unit provided they were named on a new tenancy agreement and with increased rent payable.

I find it incongruous that the Landlord would allege this tenancy must end for the reasons cited on the Notice, particularly the allegation that the Tenant threatened to burn down the neighbours home, yet agree to a continuation of the tenancy in the spring of 2023 provided the Tenant pay more rent for more occupants.

It is clear the Tenant has conflict with one of her neighbours. And it is also clear this has negatively impacted her relationship with the Landlords as they have been drawn into this conflict while attempting to address the neighbours concerns. However, I did not hear from the neighbours during the hearing before me and the letter submitted in evidence was not signed by the writer nor was the writer identified. Although I am able to accept hearsay evidence, the evidentiary weight afforded to such anonymous unsigned documents is less than sworn testimony as the allegations in the letter are not able to be challenged. In this case I give more weight to the sworn testimony of the Tenant over the unsigned anonymous letter from the neighbour and I am therefore unable to accept the Landlord's version of events over that of the Tenant.

On balance I find the Landlords have failed to provide sufficient evidence that this tenancy should end for the reasons cited on the Notice. I therefore cancel the Notice.

Conclusion

The original decision is set aside.

The Tenant's request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant is to be compensated the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize her to reduce her next months' rent by \$100.00.

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: July 11, 2023

Residential Tenancy Branch