



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding KANKO LINDEN APT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNC, MNRT, LRE, OLC, FFT
Landlord: OPC, FFL

Introduction

This hearing was reconvened from a hearing on September 11, 2023 regarding applications made by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

- cancellation of a one month notice to end tenancy for cause dated May 15, 2023 (the “One Month Notice”) pursuant to section 47 of the Act;
- compensation of \$2,000.00 for the cost of emergency repairs made during the tenancy pursuant to section 33 of the Act;
- an order suspending or setting conditions on the Landlord’s right to enter the rental unit pursuant to section and 70(1) of the Act;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62(3) of the Act; and
- authorization to recover the Tenant’s filing fee from the Landlord pursuant to section 72(1) of the Act.

The Landlord applied for:

- an order of possession based on the One Month Notice pursuant to section 55 of the Act; and
- authorization to recover the Landlord’s filing fee from the Tenant pursuant to section 72(1) of the Act.

An interim decision in this matter was issued on September 11, 2023. This decision should be read together with the interim decision.

The Tenant, the Tenant’s advocate and witness AG, and the Landlord’s representative OA attended this hearing and gave affirmed testimony.

Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Is the Landlord entitled to an order of possession?
3. Are the parties entitled to reimbursement of their filing fees?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on February 1, 2013 and is month-to-month. Rent is \$884.00 due on the first day of each month. The Tenant paid a security deposit of \$357.50.

The Landlord issued the One Month Notice to the Tenant on May 15, 2023, with an effective date of June 30, 2023. The stated reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health, safety, or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site/property
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The One Month Notice contains the following details of cause:

Tenant has allowed an occupant without having our approval that has caused damages to the rental unit and building as well disturbed other occupants in the building .Tenant have been served with several breach letters but she did not comply with our request to stop smoking in the renatl unit , clean the house and get ride of the additional occupant . (*sic*)

The Landlord submits as follows:

- The Tenant is enrolled in a voluntary supported independent living program with a non-profit society. The Tenant has been a problematic client of this program and a tenant for the building for a while. During the tenancy and the Tenant's time with the program, the Tenant has been given several breach letters, for which compliance has been hit and miss.
- On April 21, 2023, OA and a technician met with the Tenant to do the bi-weekly check of the rental unit for mice. The Tenant has a very cluttered unit that has attracted mice. OA saw another person in the rental unit with the Tenant.
- On May 5, 2023, the Tenant refused to open the door for the bi-weekly inspection for mice. The Landlord's staff learned that the Tenant had allowed another person, AG, to stay in the unit without prior permission. The society working with the Tenant also informed the Landlord that they were unable to gain access to the unit and did not meet with the Tenant for their prescheduled appointment.
- AG was not only living in the rental unit without permission, but had also stored all his personal effects on the balcony. AG goes out to smoke on the balcony on a regular basis. Other tenants noted to the Landlord that there were pigeons nesting and living in the items on the balcony. Additionally, AG put a very large reclining chair in the garbage bin, which was not an acceptable way to dispose of furniture.
- AG has a motorized bicycle that is powered by gas, which AG parked in the lobby on May 9, 2023. The strong smell of gas was noted by all tenants on the ground floor, several of whom contacted OA. OA went to speak with the Tenant, but she was not at home. AG was inside the rental unit and refused to open the door. AG removed the bike out of the lobby but parked it on the front lawn.
- On May 11, 2023, the landscaper arrived to mow the lawn and moved AG's bike to the side. AG confronted the landscaper, was aggressive, and used vulgar language to threaten the landscaper.
- On May 12, 2023, the tenant below the rental unit reported water pouring through the ceiling into their suite. The Landlord's staff, including OA, knocked on the Tenant's door and called out "Emergency! Emergency!", but there was no answer. Staff entered the rental unit and confirmed that there was water coming from the bathroom, covering the floor in two inches of water and soaking the carpet and all items on the carpet. The bathtub faucet was on and the tub overflowing with clothes in the tub, blocking the drain. AG then came in from the balcony swearing at the Landlord's staff and demanding to know why they barged in. Staff perceived AG to be slightly out of it. AG realized the unit was flooded, but kept swearing at the Landlord's staff and being verbally aggressive. OA called the police, who arrived and determined that AG had a warrant, and arrested him. OA was informed by police that AG would be jailed for the weekend. OA was unable to reach the Tenant. The damage was extensive and will be difficult to repair due to the clutter in the rental unit. It was noted that the smoke detector in the rental unit had been removed and that there was a portable stereo hanging from the heat detector.

- On May 29, 2023, a Canada Post mailman called OA due to a strong smell of gas on the tenant's floor. The smell was too strong, so the fire department was called to assess air quality. They knocked on the door to the rental unit and asked AG to remove the bike. AG moved the bike through the elevator and spilled gas all over the hallway, elevator, and lobby. The police were called to ask AG to remove the bike from the property. After the police left, AG brought the bike back to the property.
- In the months of June, July, and August 2023, OA continued to receive calls from other tenants every few days that something was happening. Tenants had seen AG leave the emergency door open, start his bike using a string attached to the gas pipe in the building, repair his bike and start the noisy engine in front of ground floor units on the law, and disturb tenants with parties and loud music until the early hours of the morning. Tenants had been disturbed by loud music at night from the rental unit since April 2023.
- On July 14, 2023, the suites below the rental unit were flooded again due to someone letting water running in the rental unit while smoking on the balcony. The damages caused by the floods were in the thousands of dollars.

The Landlord issued warning letters to the Tenant as follows:

- Breach letter dated May 9, 2023 regarding items stored on the balcony and unapproved occupant. This letter gave the Tenant a deadline of May 16, 2023 for the items to be removed from the balcony and for the Tenant's visitor to move out from the rental unit.
- Breach letter dated May 12, 2023 regarding smoking in the building and storing personal belongings in the parking lot without permission.

In addition, OA testified as follows:

- The society working with the Tenant informed the Landlord's staff about a person trespassing in the rental unit. The Landlord's staff tried to help the Tenant understand that she was not allowed to have an unapproved occupant. Previously the Landlord had given notices to the Tenant about this issue and she had complied. However, this time the Landlord received too many complaints from other tenants.
- The Landlord notified the Tenant to remove the items from the balcony. The Tenant tried, but after AG moved his belongings there, the balcony was covered with material up to the ceiling to obscure it. The fire department does not allow this as the balcony needs to be open for escape.
- AG lives in the rental unit 24/7. AG is frequently seen in the building. AG smokes in the building and causes excessive noise including loud music and partying, resulting in complaints from other tenants. AG is not compliant like the Tenant and has been aggressive. The Landlord and the society helping the Tenant do not want AG in the building.

The Landlord provided additional evidence including pest control reports, pictures, and complaint letters from other tenants.

AG gave the following testimony and evidence:

- The Tenant has lived in the rental unit many years without causing problems. The Tenant's "ordeal" has revolved around a consistent string of inadequate services from the society and the Landlord's management. The Tenant has not been provided the services that she was desperately in need of.
- During AG's visit to the rental unit, AG was confronted by an alarming sight of mice infestation. The pest exterminator has been coming to the rental unit for 2 years but has only been mitigating the situation and has failed to provide effective solutions. AG caught 25 mice during his first few weeks in the rental unit and about 40 mice in a month. The Landlord came every two weeks to harass the Tenant and retaliate the Tenant. The Landlord has breached its obligations to maintain the property and respect the Tenant's right to quiet enjoyment. AG spent money to clean and sanitize everything.
- AG found himself spending more time at the rental unit due to the "exigencies" of his work. This change brought about a "campaign of negativity" against AG by the onsite manager and the society. After a month of negative feedback from the Landlord's management, AG sent response letters to management, which have been submitted into evidence. AG does not admit any wrongdoing.
- The parties' tenancy agreement allows smoking of tobacco products inside the rental unit. That is what the parties had agreed to at the start of the tenancy. All the notices from the Landlord since then have been nothing but harassment.
- AG had a trickle of leftover gas from his carburetor, but not high enough of an amount to endanger the building. The Landlord took things out of perspective. A picture of AG's bike, stored in the underground area, was taken out of context. The initial warning about its placement arrived before AG could engage in a discussion with the manager.
- The allegations of noise disturbances are unfounded. If there was a disturbance the police would have been called.
- The pictures showing the cluttered situation were taken out of context. They were captured during extensive cleanup to address the severe health hazard that the Tenant had been living with due to the Landlord's negligence.
- There were only two incidents, one of which led to three letters and the other created two letters. The incidents did happen, but every issue raised by the Landlord has been properly addressed.
- AG stopped a major flood from happening, which was caused by a faulty lock to the patio door. AG had been locked out on the balcony and used quick thinking to stop the flood.
- The Tenant is a "special" tenant who requires additional care, support, and understanding. This vital element has been missing from the Tenant's experience during this tenancy. AG has undertaken the responsibility to establish a robust support framework for the Tenant during this challenging time.

- AG has not moved into the rental unit. AG is not paying rent and has not changed his mail. AG is just providing services to the Tenant that have been lacking for many years. AG is residing in the rental unit but is also staying with a friend. Sometimes AG comes in the afternoon and sometimes stays the night. If the Tenant is tired, then AG leaves. AG has friends and is floating until things are concrete. AG has plans to relocate to a different province.

The Tenant stated that AG was not staying with her but was just her guest. The Tenant stated that AG stayed for the hearing to happen, is not a tenant, and is not interfering with the others living there.

The Tenant submitted a video of a person, presumably AG, recording themselves carrying a bike through the building and eventually outside. The Tenant also submitted a video of the rental unit with rodent infestation into evidence.

Analysis

1. Should the One Month Notice be cancelled?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 of the Act.

I find the Tenant was served with the One Month Notice on May 15, 2023 in accordance with section 88(e) of the Act. The Tenant submitted this application on May 19, 2023. I find the Tenant made this application within the 10-day deadline under section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The reasons provided in the One Month Notice for ending the tenancy correspond to circumstances described in sections 47(1)(d), (f), and (h) of the Act as follows:

Landlord's notice: cause

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

(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;

(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;

(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;

As explained below, I find the Landlord has established cause for ending this tenancy for all of the reasons stated on the One Month Notice, even though the Landlord only needs to prove one of the reasons for ending this tenancy. Therefore, I am satisfied that this tenancy must be terminated for cause.

First, I find AG has been at all material times a person permitted onto the property by the Tenant.

Based on the complaint letters submitted by the Landlord, I am satisfied that in April 2023, there were incidences of loud music playing at night from the rental unit. I accept the Landlord's evidence that a portable stereo had been hung from the heat detector in the rental unit. I find that more likely than not, these incidents of noise were caused by AG. I find that in May 2023, AG brought his bike into different areas of the building, leaving a strong smell of gas and gas spillage. I am satisfied that as a result of these incidents, AG has significantly interfered with and unreasonably disturbed other occupants of the property.

Second, I find the Landlord's pictures and the Tenant's video all show the rental unit to be in a highly cluttered and dirty condition. I find the Landlord's pictures also show that the balcony was filled with personal belongings, and later enclosed with a dark material reaching to the ceiling. I find the level of clutter in the rental unit, combined with the blocked balcony and AG's habit of smoking, to present a serious fire risk. I find there is insufficient evidence to indicate whether there has been any improvement to the condition of the rental unit or balcony. Under these circumstances, I find the Tenant and AG have seriously jeopardized the health and safety of other occupants and have put the property at significant risk due to the fire hazard.

Third, I find that more likely than not, the flood on May 12, 2023 was caused by AG leaving the water in the bathroom running, while AG was smoking on the balcony and had locked himself out. I find this flood caused damage not only to the rental unit but also to other units below. Therefore, I am satisfied that AG caused extraordinary damage to the property through this incident.

Lastly, I find that according to section 13 of the parties' tenancy agreement, only individuals listed in the tenancy agreement may occupy the rental unit or property. Otherwise, the Tenant must apply in writing for the Landlord's approval to have another occupant. I find this section further states that failure to obtain the Landlord's written approval is a breach of a material term of the tenancy agreement, giving the Landlord the right to end tenancy on proper notice.

I am satisfied that section 13 is a material term of the tenancy agreement, considering not only the wording of this section but also the importance to the agreement overall for the Landlord to be able to screen occupants for the rental unit.

I find the Tenant breached section 13 by allowing AG to reside in the rental unit without first applying to the Landlord in writing and obtaining the Landlord's approval. I find AG acknowledged that he stays overnight in the rental unit. I find AG's evidence suggests that he does not have any other permanent residence of his own. I note I do not find it is necessary for AG to stay in the rental unit all the time in order to be considered an occupant. Based on the evidence present, I find AG occupies the rental unit for a residential purpose on at least a part-time basis. I do not find whether AG pays the rent or the address used by AG for mailing purposes to be relevant.

I further note I do not find it was necessary for AG to reside in the rental unit to help the Tenant with cleaning up the rental unit or assist the Tenant with this dispute resolution

process. I find AG's occupation of the rental unit and behaviours on the property were the primary reasons for this eviction.

I find the Landlord notified the Tenant in writing of a breach of material terms in a letter dated May 9, 2023. I find the Landlord informed the Tenant that the Landlord considered a breach of section 13 to be a material breach of the tenancy agreement. I find the Landlord gave the Tenant a deadline of May 16, 2023 for the additional occupant to move out.

I find that as at the date of the reconvened hearing, or September 27, 2023, AG continues to reside in the rental unit. I also accept the Landlord's evidence that other residents have witnessed AG at the property and have lodged complaints about AG's behaviours in the months leading up to the hearing.

Therefore, I conclude that by allowing AG to continue residing in the rental unit months after the Landlord's warning letter dated May 9, 2023, the Tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the Landlord gave written notice to do so.

For the reasons given above, I am satisfied that the Landlord has established cause for ending this tenancy under sections 47(1)(d), (f), and (h) of the Act.

Accordingly, I dismiss the Tenant's claim to cancel the One Month Notice without leave to re-apply.

2. Is the Landlord entitled to an order of possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to comply with the requirements of section 52 of the Act and having dismissed the Tenant's claim to cancel the One Month Notice, I find the Landlord is entitled to an order of possession under section 55(1) of the Act.

The effective date of the One Month Notice has already passed. As noted in Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may extend the effective date beyond the usual two days provided.

In this case, I find the substantial negative impact of AG's behaviours on other residents and the Landlord's property warrants an earlier effective date for the order of possession. However, considering the Tenant's personal circumstances and the length of this tenancy, I find the Tenant will require more than the standard two days to vacate the rental unit. Accordingly, I grant an order of possession to the Landlord effective 1:00 pm on November 3, 2023.

3. Are the parties entitled to reimbursement of their filing fees?

The Landlord has been successful in obtaining an order of possession, which is a claim sought in the Landlord's own application. Therefore, I grant the Landlord reimbursement of its filing fee under section 72(1) of the Act.

The Tenant's claim for reimbursement of her filing fee is dismissed without leave to re-apply.

Conclusion

The Landlord is successful in establishing cause for ending this tenancy under the One Month Notice.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm on November 3, 2023**. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Landlord's claim to recover the filing fee is granted. Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain **\$100.00** from the Tenant's security deposit in full satisfaction of the filing fee awarded.

The Tenant's claims to cancel the One Month Notice and to recover the filing fee are dismissed without leave to re-apply. The remaining claims made the Tenant have been severed and dismissed with leave to re-apply as per the interim decision.

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

Dated: October 27, 2023

Residential Tenancy Branch