DECISION

Introduction

The Landlord filed an Application for Dispute Resolution under the *Residential Tenancy Act* (Act) for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant also filed an Application for Dispute Resolution under the *Residential Tenancy Act* (Act) for:

- more time to dispute the One Month Notice under sections 47 and 66 of the Act
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65 of the Act
- an order regarding the tenant's dispute of an additional rent increase for capital expenditures by the landlord pursuant to sections 43(3) and 67 of the Act
- an order for the landlord to make emergency repairs for health or safety reasons pursuant to sections 33 and 62 of the Act
- an order for the landlord to provide services or facilities required by law pursuant to section 27 and 65 (f) of the Act
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70(1) of the Act
- authorization to change the locks to the rental unit pursuant to section 70(2) of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

Preliminary Matters

This is a new hearing ordered by the British Columbia Court of Appeal due to a judicial review of the initial hearing. I note that the Court of Appeal ordered a new hearing on the merits of all matters before the Residential Tenancy Branch.

At the outset of the hearing, I canvassed with the Tenant all claims filed for to determine what relief he was still seeking. He advised that he is abandoning the following claims for relief:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order regarding the tenant's dispute of an additional rent increase for capital expenditures by the landlord pursuant to sections 43(3) and 67 of the Act
- an order for the landlord to make emergency repairs for health or safety reasons pursuant to sections 33 and 62 of the Act
- an order for the landlord to provide services or facilities required by law pursuant to section 27 and 65 (f) of the Act
- authorization to change the locks to the rental unit pursuant to section 70(2) of the Act

Therefore the hearing proceeded on the remaining claims of the Tenant, as well as the Landlord's claim for an Order of Possession for the rental unit and recovery of the filing fee.

I also canvassed with the Tenant the fact that some of his evidence was unable to be viewed by me. I advised him of the evidence I could view and the evidence I couldn't view and gave him the opportunity during the hearing to raise issues of evidence that he was relying upon that I could not view. The Tenant did not raise any issues regarding evidence during the hearing.

Service

All parties acknowledged service of the Dispute Notices and evidence filed in this matter. The Tenant's original Dispute Notice was dated July 8, 2022 and the Landlord's original Dispute Notice was dated July 9, 2022. All parties acknowledged receiving the most recent Dispute Notice from the Residential Tenancy Branch advising them of the hearing today. Both parties acknowledged receiving each other's evidence.

Issues

Is the Tenant entitled to more time to dispute the One Month Notice?

Is the One Month Notice Valid and Effective? Is the Landlord entitled to an order of possession?

Is the Tenant entitled to an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Is either party entitled to an authorization to recover their filing fee?

Background and Evidence

The tenancy started August 1, 2015, and is currently month to month. Current rent is $1,427.00 per month due on the last day of the month. The Tenant paid a security deposit of $566.00. The Tenant still occupies the rental unit.

The Tenant was served a One Month Notice on June 27, 2022 effective July 31, 2022. The One Month Notice was provided in evidence.

There were a number of claims and I will address them in order.

Is the Tenant Entitled to More Time to Dispute the One Month Notice and is the One Month Notice Valid?

Tenant's Evidence

The Tenant had the onus to establish the need for more time to dispute the One Month Notice. The One Month Notice served personally on the Tenant on June 27, 2022, stated that the Tenant had 10 days to dispute the notice, the deadline being July 7, 2022. The Tenant filed his application on July 8, 2022, a day late.

The Tenant testified that the reason he did not dispute the One Month Notice within the required time was due to illness which he believed was Covid 19. He did not produce a Doctor's note, test results, or any corroborating evidence to describe the nature of his illness.

The Tenant denied the Landlord's allegations of excessive noise and noted that warning letters provided by the Landlord for excessive noise, unreasonable disturbances and breaches of terms of the tenancy agreement had no basis in evidence. He further stated that the Landlord's allegations of property damage were to a rental property with a different address from his rental property. He also alleged that the Landlord was attempting to "renovict" the occupants of the rental property. In support of his position, the Tenant provided text messages between himself and another occupant of the rental property suggesting the Landlord was attempting to "renovict" the occupants of the rental property.

Landlord's Evidence

The Landlord's counsel referred to the Residential Policy Guideline #38 which states:

> **Exceptional Circumstances**
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> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said. Some examples of what might not be considered "exceptional" circumstances include:
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> • the party who applied late for arbitration was not feeling well
> • the party did not know the applicable law or procedure
> • the party was not paying attention to the correct procedure
> • the party changed his or her mind about filing an application for arbitration
> • the party relied on incorrect information from a friend or relative
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> Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:
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> • the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

Counsel for the Landlord argued that the Tenant did not meet the standard in the policy guidelines for an extension and therefore should not be permitted more time to dispute the One Month Notice. They argued the Tenant could have filed their dispute online or designated an agent to apply on his behalf.

The Landlord provided in evidence the written warnings that they had given to the Tenant starting in 2016 and continuing through June 2022. The notices were numerous, and described complaints of other occupants regarding excessive noise made by the Tenant, garbage being thrown by the Tenant into common areas, the Tenant riding his motorcycle in a noisy manner on the property, and the Tenant throwing rocks from his balcony, damaging a skylight on a neighbouring building and a car parked in visitor parking on the Landlord's property. The Landlord clarified that the damaged skylight was another rental property building on the same land, with a different address from the Tenant's rental property. The Landlord testified that they are the Landlord for both buildings.

Analysis and Finding - More Time to Dispute the One Month Notice and Validity of the One Month Notice

I find that the Tenant has not established, based on the evidence, that he was unable to file an application for dispute resolution on time due to exceptional circumstances. The Tenant did not provide any corroborating evidence for his claim of illness. He speculated in the hearing that his illness may have been Covid 19. He provided no evidence of positive Covid tests, doctor's notes, or hospital admissions to corroborate the nature or severity of his illness. He did not explain why he was unable to instruct someone to file a dispute application on his behalf. The Residential Tenancy Branch allows applications to be filed online or in paper form at RTB Burnaby office or at any Service BC office. There was no need for the Tenant to attend in person to file his application. I find that the Tenant did not establish the exceptional circumstances showing why he could not file his application on time as required by the RTB Policy Guidelines and therefore is not entitled to an extension of time to file the application to dispute the One Month Notice.

I am dismissing the Tenant's application for more time to file his application for dispute resolution. However I must still consider whether Landlord's One Month Notice meets the form and content requirements of section 52 of the Act and whether the Landlord has demonstrated some cause to issue the One Month Notice as per *MBB v. Affordable Charitable Housing Association 2018 BCSC 2418.* I considered the following comment by the Court:

> I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

The One Month Notice issued by the Landlord complies with the form and content requirements of section 52 of the Act. The Tenant appeared and participated in the hearing, and as I understand before relying on the conclusive presumption in section 55(1) of the Act, I must consider the grounds listed in the One Month Notice.

I note that one of the reasons listed on the One Month Notice was that Tenant significantly interfered with or unreasonably disturbed other occupants. The Landlord produced several warning letters served on the Tenant warning that he was unreasonably disturbing other occupants of the rental unit by creating excessive noise, and the Tenant caused excessive damage to the Landlord's property. The Tenant's evidence was that the damage was caused to another building. He did not deny causing the damage. He did not deny the allegations of excessive noise. I further find that the

Tenant's claims of being "renovicted" based on emails, have no merit as the Landlord was providing the Tenant with warning letters from 2016 through 2022 and did not provide a One Month Notice to the Tenant until June 27, 2022.

The damage was caused to another building also owned by the same Landlord, which has a different address but forms part of the same rental property upon which the Tenant's rental unit is located. I find that the damaged building formed part of the same rental property regardless of the different address. I find, based on the undisputed evidence of the Landlord, that the Tenant's actions over the years unreasonably disturbed other occupants. This is based on the complaints of excessive noise, the evidence of damage, and warning letters issued to the Tenant advising the Tenant of the noise complaints and the excessive damage to the rental property by the Tenant.

Section 55(1) of the Act requires me to issue an order of possession to the Landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the Tenant's application for dispute resolution. Both requirements are satisfied. The One Month Notice meets the form and content requirements of section 52 of the Act. I have considered the grounds for issuing the One Month Notice and find them sufficient, and I have dismissed the Tenant's application disputing the One Month Notice. The Landlord is therefore entitled to an order of possession under section 55(1) of the Act.

In considering the date to grant an order of possession, I have considered Residential Tenancy Branch Policy Guideline 54 which states the factors to consider in determining an appropriate time to end the tenancy:

> An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. 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 consider extending the effective date of an order of possession beyond the usual two days provided. While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:
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> • The point up to which the rent has been paid.
> • The length of the tenancy. e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
> • If the tenant provides evidence that it would be unreasonable to vacate the property in two days. e.g., If the tenant provides evidence of a disability or a chronic health condition.

I have no evidence before me that the Tenant is delinquent in rent and I have taken into account that the Tenant has lived in the rental unit since August 1, 2015. Therefore, I find it is not appropriate to issue an order of possession for the day before the next month rent is due, February 29, 2024, and it is more appropriate to issue an order of possession in favour of the Landlord for March 31, 2024 at 1:00pm to allow the Tenant a reasonable opportunity to secure new accommodations.

Is the Tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Tenant's Evidence

The Tenant testified that he reported a leak under his bathroom sink in December 2021. The Landlord asked the Tenant if it was urgent and the Tenant stated it could wait until January, 2022. The Tenant then called Worksafe BC on January 22, 2022, regarding concerns for asbestos and Worksafe BC issued a stop work order to investigate potential asbestos.

Landlord's Evidence

The Landlord supplied hazard and remediation reports in evidence showing the asbestos concern was moderate. The Tenant testified that he was not required to leave his rental unit by Worksafe BC but also did not believe Worksafe BC could issue such an order. The Tenant remained in the rental unit while repairs were completed. He testified that the bathroom had construction debris for 3-4 months but he was always able to access the shower and washroom facilities.

The Landlord's counsel submitted that the Tenant's evidence is not credible on this point as he initially complained about a leaky pipe under the sink, had told the Landlord the leaky pipe was not an emergency and called Worksafe BC on his own motion about asbestos.

Analysis and Finding – Rent Reduction

I find that the Tenant has not established that the leaky pipe under the sink and subsequent Landlord repairs entitled him to a rent reduction for that period. His evidence was vague on the timeline for repairs, and he was candid in admitting that he was still able to access the bathroom facilities while repairs were occurring. Any claim with respect to potential asbestos exposure is likely premature without medical evidence

of damage, and the Residential Tenancy Branch does not have jurisdiction over any health claims. The leak has been repaired.

I find however, that there was a minimal infraction of quiet enjoyment during the time the leak was being repaired and I have considered RTB Policy Guideline 16 which states in part:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right

I find based on RTB Policy Guideline 16 that it is appropriate to award the Tenant $150.00 in nominal damages for the time his washroom facilities were under repair.

Is the Tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit? Is the Tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

I have ended the tenancy as of March 31,2024. Therefore, these claims by the Tenant are no longer relevant as the tenancy is ending.

Is Either Party Entitled to Authorization to Recover the Filing Fee for Their Application?

Both parties were partially successful in their application, and their claims for recovering the filing fee for their applications are offset and therefore dismissed.

Conclusion

I find the Landlord is entitled to an order of possession, which will be effective at 1:00 pm on March 31, 2024.

The Tenant is entitled to a monetary order of $150.00 for nominal damages due to the inconvenience of the repairs to his leaky bathroom pipe.

The remaining claims of both parties are dismissed.

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: February 23, 2024

Residential Tenancy Branch