



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNC, FFT / OPC-DR, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant seeks:

- An order cancelling a One Month Notice to End Tenancy for Cause (the Notice) under section 47(4) of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

The Landlord seeks:

- An order of possession based on the Notice under sections 47 and 55 of the Act; and
- To recover the filing fee for their Application from the Tenant under section 72 of the Act.

Service of Notice of Dispute Resolution Proceeding and Evidence

The parties each acknowledged receipt of the Notice of Dispute Resolution Proceeding Package for the other's Application and the other's evidence. Given this, I find that these records were served as required under sections 88 and 89 of the Act.

Issues to be Decided

- Is the Tenant entitled to an order cancelling the Notice?
- If not, is the Landlord entitled to an Order of Possession?
- Are either party entitled to recover the filing fees for their respective Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy commenced on April 6, 2016 for a fixed term ending March 31, 2017 and has continued on a month-to-month basis since.
- Rent was initially \$1,400.00 per month, due on the first day of the month, though there have been annual rent increases since.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenant still occupies the rental unit, an apartment suite in Vancouver.

The current monthly rent and the amount the Landlord holds in terms of deposits was in dispute. The Tenant said rent is currently \$1,854.00 per month, whilst the Landlord was of the position rent is \$1,604.00 per month, with parking and storage fees of \$100.00 and \$75.00 respectively, for a total of \$1,779.00. The Tenant indicated a security deposit of \$765.00 and a pet damage deposit of \$1,400.00 were paid, whilst the Landlord's Agent said the Landlord holds a security deposit of \$700.00 and a pet damage deposit of \$400.00.

Neither party provided written evidence to support their positions, but as these issues were not central to the dispute before me, I took the discrepancy no further.

A copy of the Notice was entered into evidence. The Notice is on the approved form, is signed and dated March 1, 2025 and provides an effective date of April 30. The Notice was served March 1 and the Tenant acknowledged receiving it the same day. The reason for ending the tenancy, per the Notice is:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.

The Landlord's position

The Landlord's Agent testified as follows. On February 6, 2025, another tenant in the residential property contacted the Landlord to report they had included the incorrect mailing address on a package they ordered, and had addressed it to the Tenant's unit number instead.

The Landlord's Agent contacted the Tenant about the matter, who responded that they had received a package addressed to their unit with an unfamiliar and unpronounceable name in it which they had opened and found to be empty. In email correspondence, the Tenant indicated their belief this was part of a common parcel scam. The empty parcel was not provided by the Tenant to the Landlord as requested. The Landlord's Agent indicated an end to the tenancy is not sought based on this incident, and the details were simply provided for background to this dispute.

Another tenant in the residential property reported to the Landlord that on February 24, 2025, a package of theirs was delivered, but was missing. The Landlord's Agent said they looked at footage from the security camera in the lobby of the residential property and saw the Tenant take the package in question. They then let the Tenant know the Notice would be issued because of this.

The Landlord's Agent referred me to the security camera footage provided as evidence and took the position it showed the Tenant entering the residential property holding their dog, approaching the table in the lobby where parcel carriers leave packages for the residents, then walk away with a box in their right hand and their dog and another parcel in the other, which is the missing parcel belonging to another tenant.

I was referred to a proof of delivery confirmation document from the courier responsible for delivering the parcel that was reported missing, which appears to indicate the parcel was delivered at 1:36 PM on February 24, 2025. The document also includes photographs of the front of the residential property, the parcel table in the lobby, and the parcel in the gloved hand of the courier.

The Landlord's Agent argued the image of the parcel in the delivery confirmation documents matches the one in the left arm of the Tenant in the video footage. Further,

the parcel is also not seen on the table after the Tenant's visit, where they spend time looking through the packages, despite theirs being on the very end.

The Tenant's response

Counsel for the Tenant submitted the Landlord's evidence surrounding the parcel delivered February 6, 2025 amounted to hearsay and there was no direct evidence from the tenant who allegedly had their mail go missing. Further, the Tenant left the empty parcel at the concierge's desk on February 21.

It was submitted that the Tenant received a parcel of their own on February 24, 2025, which they collected from the parcel table. Tracking information for the Tenant's delivery was provided as evidence by the Tenant.

It was initially thought from the Tenant's side that the Landlord was referring to the box seen in the Tenant's right hand in the video footage as the allegedly missing package. The Tenant's position on this, was that the image of the package in the delivery confirmation differed from the one held by the Tenant in the footage. When it was understood the Landlord's Agent was instead referring to the item in the Tenant's left arm, held along with their dog, the Tenant's position remained unaltered.

Whilst it was undisputed from the Tenant's side that the Tenant appears to be holding only their dog when entering the building on the video footage, it was submitted the item they are holding along with their dog later in the footage may have been hidden from view by their dog upon entry to the residential property. The Tenant testified the item in question could have been either a dog waste bag, or an item they bought from a local store whilst walking their dog and disputed stealing any pieces of mail from another resident of the property.

Counsel submitted there was insufficient evidence to establish the Tenant stole the allegedly missing parcel, that there was no supporting evidence which spoke to the contents or identifying features of the parcel to better identify it, and that making the assumption the Tenant stole a parcel from them moving items on the parcel table around was erroneous, as they would inevitably have to dig around to find their parcel.

Analysis

Section 47 of the Act states that a landlord may end a tenancy for cause by issuing a Notice to End Tenancy. Section 47(4) of the Act states that a tenant may dispute a

notice issued for cause by making an application for dispute resolution within ten days of receiving the notice, as is the case here.

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

There is one reason provided on the Notice which is echoed in section 47(1)(e)(ii) of the Act, which sets out that a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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.

The Landlord's allegations in this dispute center around mail theft by the Tenant. As set out in Policy Guideline 32 - *Illegal Activities*, the term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. The party making the allegations has the burden of proving the activity in question was illegal.

The issue of whether mail theft was illegal was not a contentious issue. Though it was not referenced directly during proceedings, for completeness I note section 356(1)(a)(i) of the *Criminal Code of Canada* sets out that everyone commits an offence who steals anything sent by post, after it is deposited at a post office and before it is delivered, or after it is delivered but before it is in the possession of the addressee or of a person who may reasonably be considered to be authorized by the addressee to receive mail.

For clarity, for the purposes of this dispute the test for establishing that an activity was illegal and is therefore grounds for terminating a tenancy is not the criminal standard, which is proof beyond a reasonable doubt, but on a balance of probabilities.

When it comes to ending a tenancy based on illegal activities, the threshold for any effect on the landlord or another occupant caused by the activity is lower than other instances of misconduct under section 47 of the Act. The illegal activity just has to adversely affect rather than, for example, significantly interfere with the landlord or another occupant.

I find that having one's mail stolen would clearly be an illegal activity, and if this were to happen to an occupant of a residential property, this would adversely affect their quiet enjoyment security, safety or physical well-being and would justify ending a tenancy.

The Landlord's Agent indicated an end to this tenancy was not sought based on the purportedly missing parcel from February 6, 2025. For completeness, my findings are that there was insufficient evidence to indicate any misconduct on the Tenant's part that would justify ending the tenancy on this issue.

The crux of the matter before me is whether the Landlord has established on a balance of probabilities that the Tenant committed mail theft and stole a package of another occupant of the residential property on February 24, 2025. For the reasons outlined below, I find the Landlord has failed to do so.

There was no dispute that the Tenant is seen in the security camera footage to enter the residential property on February 24, 2025, timestamped at just after 4:18 PM, carrying their dog. They appear to be holding nothing else. They then appear to spend about 45 seconds at the parcel table in the lobby and walk away holding a small rectangular box in their right hand, and an item with a rectangular, orange design or label on that is seen to be held in their left arm along with their dog.

I agree with the Tenant's position that this item seen after the Tenant leaves the parcel table does not bear a close resemblance to the piece of allegedly missing mail as it is shown in the delivery confirmation document. I find the orange or light red design or label on the item does not match at all closely with the image of the purportedly missing item shown in the delivery tracking document, which shows a small, predominantly white package with some black edging and a long, thin red strip along one side. The items also appear to be different shapes. From the evidence before me, my finding is that the items are not one and the same and to find otherwise would require an unreasonable and significant leap I am not prepared to make.

I am not prepared to reach the conclusion the Tenant stole the package in question by virtue of the fact it is not clearly visible on the parcel table in the section of the video footage after the Tenant moves away from the table. There is at least one other parcel in addition to the Tenant's own parcel that are not clearly visible after the Tenant walks away from the table. It is evident from the footage that the Tenant is looking through the numerous packages left on the table looking for theirs and, in the process, has left the table in a different state.

The footage shows the Tenant is carrying something that was not visible before, but I find the evidence before me does not establish this is the allegedly missing package. I found the Tenant's explanation for the item coming into view after leaving the table to be plausible and the Tenant's testimony where they disputed taking any items of mail belonging to another person to clear and carry significant weight.

Based on the above, I find the Landlord has failed to establish they had sufficient cause to issue the Notice and obtain an end to this tenancy under section 47 of the Act. Therefore, I dismiss the Landlord's Application without leave to reapply and grant the Tenant's Application. I order the One Month Notice to End Tenancy for Cause dated March 1, 2025 cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the return of the filing fee under section 72(2)(a) of the Act. The Landlord must bear the cost of the filing fee for their Application.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

The Tenant's Application is granted. The Notice is cancelled.

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: April 11, 2025

Residential Tenancy Branch