



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC, CNC, FF, MNDC, OLC, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 26, 2013 and a monetary order for damages. The hearing was also to deal with a cross application by the tenant seeking to cancel the One-Month Notice to End Tenancy for Cause, a monetary order for damages , and order to force the landlord to comply and an order to restrict the landlord's access to the unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matters

1. Sever Landlord's Monetary Claim

In regard to the landlord's monetary claim, I find that the Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find that the landlord's monetary claim for damages under section 67 of the Act is distinct from the other portion of the landlord's application that pertains to terminating the tenancy for cause, which is pursuant to section 47 and 55 of the Act.

Accordingly, I find that the monetary portion of this application should be severed and the matter must be dealt with separately through an application under section 67 of the Act. Therefore the landlord's request for a monetary order is dismissed with leave to reapply.

2. Sever Tenant's Monetary Claims

With respect to the tenant's monetary claim, I find that Residential Tenancy Rules of Procedure, Rule 2.3 applies to this situation as well. I find that the most pressing matter in the tenant's application is the request to cancel the One Month Notice to End Tenancy for Cause. Because the tenant's claim for damages is made under section 67 of the Act, I find that this part of the application is distinct from the tenant's request that the One Month Notice to End Tenancy for Cause, be cancelled pursuant to section 47 of the Act.

Accordingly, I find that the monetary portion of the tenant's application must be severed and the monetary claim must be dealt with separately through an application under section 67 of the Act. Therefore the portion of the tenant's application seeking a monetary order is dismissed with leave to reapply.

3. Previous Hearings

Numerous previous hearings have been held in the past, and decisions were issued on the tenant's applications on October 4, 2012, December 3, 2012 and August 22, 2013. The tenant also filed two applications in September 2013, that were subsequently cancelled by the tenant. A prior decision was rendered on the landlord's cross application on August 22, 2013 as well.

Both the landlord and tenant made reference to previous findings and decisions. The landlord submitted copies of other decisions into evidence and the tenant also included excerpts from past decisions in their evidence package too.

As this hearing is being held to determine whether the most current One Month Notice to End Tenancy should be cancelled or enforced, I find that any evidence relating to past disputes is not relevant to the matter before me today and all evidence relating to prior hearings will not be considered.

However, with respect to the August 22, 2013 decision I find that the arbitrator, had accepted that the tenant "*did not cooperate with the landlord*" in regard to the landlord's request to show the unit and issued an order against the tenant. This related to a previous One Month Notice to End Tenancy for Cause. However, the landlord is now alleging that the tenant failed to comply with the order excerpted below:

"I order the tenant to respond to the landlord's request for appointments for inspections and/or to show the rental unit to prospective buyers within

a timely manner and to allow access to the landlord and/or her designated agents for the purpose of showing the rental unit to prospective buyers.”

Although the above order was issued in the August 22, 2013 decision, I find that the hearing before me now relates only to the most current One Month Notice to End Tenancy for Cause issued on September 26, 2013. Therefore, I will accept and consider only relevant evidence pertaining to events and actions that led to this latest Notice being served on the tenant, not matters previously considered.

Therefore, any evidence, other than that pertaining to the tenant's alleged failure to comply with the previous order, from the past dispute resolution hearings, including the most recent three-part hearing heard on June 12, 2013, June 28, 2013 and August 13, 2013, will not be considered.

4. Tenant's Judicial Review Application

Evidence submitted by the tenant indicates that the tenant has filed an application to the Supreme Court of British Columbia with respect to the previous hearing decision that was issued on August 22, 2013.

Section 58 (1) of the Act states that, except as restricted under this Act, a person may make an application in relation to a dispute with respect to rights, obligations and prohibitions under the Act and rights and obligations under the terms of a tenancy agreement that are required or prohibited under the Act, or relate to the use, occupation or maintenance of the rental unit, or use of common areas, services or facilities.

Section 58(2) states that an application under subsection (1), will be determined the dispute unless

(a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,

(b) the application was not made within the applicable period specified under this Act, or

(c) *the dispute is linked substantially to a matter that is before the Supreme Court.* (My emphasis)

I have considered the question of whether or not the matter before me is substantially linked to the matter now put forth by the tenant in his application and petition to the Supreme Court of British Columbia, filed on October 4, 2013.

I find that the August 22, 2013 hearing and dispute resolution decision has no relation nor relevance to my determination of whether or not the current One-Month Notice dated September 26, 2013 before me in this dispute, should be

upheld or cancelled, as I will only consider events and actions that transpired after the previous hearing decision of August 22, 2013.

Accordingly, I find that the matter being heard today is not substantially linked to the matter that is now before the Supreme Court and therefore there is no reason to decline to hear or determine the matter of the One Month Notice to End Tenancy for Cause dated September 26, 2013.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice for Cause dated September 26, 2013, or should it be cancelled as requested by the tenant?

Background and Evidence

The tenancy began on October 26, 2011. The current rent is \$1,950.00 and the landlord is holding a security deposit of \$975.00 on behalf of the tenant.

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated September 26, 2013, written testimony from the landlord and witnesses, copies of communications, copies of previous decisions, copies of transcripts of telephone messages and a doctor's report.

The One Month Notice to End Tenancy for Cause indicated that the tenancy is being terminated as the tenant has

47(1)(d)(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

47(1)(d)(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

47(1)(h) (i) has failed to comply with a material term, and

47(1)(h)(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

47(l) 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.

The landlord testified that the tenant continues to refuse to cooperate with the landlord's agents requesting access to inspect or show the residence to potential purchasers.

The landlord gave detailed accounts of four separate occasions, since the last hearing, where the tenant has thwarted efforts to show the rental unit. The landlord presented evidence that confirmed that written requests were properly served on the tenant, including a communication dated September 5, 2013 giving the tenant various options of showing times and asking the tenant to confirm his preference.

The landlord testified that the tenant's refusal to cooperate with that specific agent unfairly interfered with the landlord in marketing the unit for sale and is noncompliant with the order of August 22, 2013 ordering the tenant,

"to allow access to the landlord and/or her designated agents for the purpose of showing the rental unit to prospective buyers."

The landlord testified that the tenant refused to communicate with their designated agent despite the order to do so and they were therefore forced to find another agent to attempt to interact with the tenant and assist with the sale.

A copy of the tenant's response verified that the tenant did receive the communication requesting the showing. The tenant responded that he has a "*huge issue*" with the agent who sent the communication. The tenant indicated that he would only respond to the landlord or a different agent than the one who sent the communication on September 5, 2013.

During the hearing, the tenant acknowledged that he refused to deal with the particular agent in question and stated that the reason for this is because of the agent's inappropriate conduct.

The landlord stated that, despite the fact that they accommodated the tenant by assigning a different agent, the tenant was still unresponsive. In evidence was another communication from the landlord to the tenant dated September 16, 2013 requesting access and giving the tenant a choice of viewing options.

The landlord submitted a copy of a third letter addressed to the tenant dated September 18, 2013, from their new agent, requesting a viewing for Saturday September 21, 2013. The letter offered the tenant an number of choices for regular showings on the weekdays or weekends and specifically requested a response from the tenant. The landlord testified that they did not receive any written confirmation in response to the request for the Saturday showing, nor the proposed scheduling of future showings.

The tenant testified that he did not respond as they were out of town at the time.

The landlord submitted a copy of a fourth communication dated September 25, 2013 requesting the tenant's response to the previous communication and requesting access

to interested buyers for the upcoming Saturday. The landlord testified that when no response was received, they issued a One Month Notice to End Tenancy for Cause.

The landlord testified that, despite repeated efforts on the landlord's part to attempt to market their property, the tenant has continued to engage in the same obstructive behavior that had already resulted in a monetary award in favour of the landlord in the past and the tenant still refuses to cooperate with the landlord's efforts to find a buyer.

The landlord's position is that the tenants failure to respond is a violation of the direct order issued to the tenant on August 22, 2013 in which the arbitrator wrote, *"I order the tenant to respond to the landlord's request for appointments for inspections for inspections and/or to show the rental unit to prospective buyers within a timely manner"*

The tenant defended his failure to respond and stated that the landlord was at liberty to schedule showings in accordance with the Act. The tenant stated that the fact he was away does not constitute refusal to cooperate.

The landlord stated that their "for sale" sign was removed from the property by persons unknown. The tenant denied tampering with the realty signs.

The tenant requested that the landlord be forced to comply with the Act and that an order be granted restricting the landlord's access to the rental. The tenant testified that he has been harassed by the landlord.

The landlord denied violating the Act and testified that in the previous decision, the arbitrator made a specific finding that they had complied with the Act. The landlord testified that they have complied with section 29 of the Act in every respect.

Analysis – Notice to End Tenancy

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end Tenancy under the Act.

In considering whether or not the One Month Notice to End Tenancy for Cause should be cancelled, I find it necessary to establish whether or not the tenant's actions constituted one or more of the following: significantly interfering with or unreasonably disturbing another occupant or the landlord; seriously jeopardizing the health or safety or a lawful right or interest of the landlord or another occupant; failing to comply with a material term and not correcting this within a reasonable time after the landlord gives written notice to do so; and not complying with an order of the arbitrator within 30 days following the date the tenant received the order.

In this instance, based on the evidence before me, I find that the tenant refused to respond to a designated agent duly assigned by the landlord to market the property.

I further find that, despite four separate attempts to arrange showings of the unit during the month of September 2013 and thereafter, the tenant has not adequately responded to the landlord's repeated written requests for confirmation of proposed times and dates for access. I find as a fact that the tenant's neglect in communicating with the landlord constitutes a failure to cooperate as required under the Act.

Section 29 (1) of the Act permits a landlord to request access of the rental unit for a reasonable purpose. Residential Tenancy Policy Guideline 7 states that,

A "reasonable purpose" may include:

- *inspecting the premises for damage,*
- *carrying out repairs to the premises,*
- *showing the premises to prospective tenants, or*
- *showing the premises to prospective purchasers.* (My emphasis)

In addition, I further find that the tenant's failure to respond to the landlord's requests for access significantly interfered with the landlord and seriously jeopardized a lawful right or interest of the landlord. This includes the landlord's legal right to show and market the property without unreasonable interference from the tenant.

Accordingly, I find that there is no justifiable reason to cancel the One Month Notice to End Tenancy for Cause dated September 26, 2013, as the landlord has provided evidentiary proof that they had sufficient cause to support this Notice.

Given the above, I dismiss the portion of the tenant's application requesting that the One Month Notice to End Tenancy for Cause, dated September 26, 2013, be cancelled as I find that the Notice is valid.

I hereby grant the landlord's application for an Order of Possession effective two days after service on the tenant. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application without leave.

In regard to the tenant's request for an order to force the landlord to comply with the Act and an order restricting the landlord's access, I find that the landlord has acted in compliance with the Act. I further find that an order restricting the landlord's access is not warranted. Therefore I dismiss the tenant's application seeking an order to

force the landlord to comply and an order restricting the landlord's access without leave to reapply.

The monetary portions of both the tenant's and the landlord's applications are severed and dismissed with leave.

Conclusion

The landlord is partially successful in the cross application and is granted an Order of Possession based on the 1-Month Notice to End Tenancy for Cause. The remainder of the landlord's application is severed and dismissed with leave. T

The tenant is not successful in the application and the tenant's request seeking to cancel the 1-Month Notice and the request seeking an order restricting the landlord's access are both dismissed without leave. The remainder of the tenant's application seeking a monetary order is severed and dismissed with leave.

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: December 6, 2013

Residential Tenancy Branch

