Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The tenant JT testified at the hearing that the tenants' request for an order that the landlord comply is in relation to the issuance of the "three-month notice" on 29 March 2015.

Both tenants appeared. The landlord appeared. Each party in attendance was given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the hearing, the landlord made an oral request for an order of possession in the event that I find that the 1 Month Notice is valid.

Preliminary Issue – Admission of Landlord's Evidence

The tenant JT testified that the tenants received the landlord's evidence on 7 July 2015.

Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) sets out that an applicant must receive evidence from the respondent not less than seven days before the hearing. The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 of the Rules and the definition of days, the last day for the landlord to file and serve evidence in reply to the tenants' application was 6 July 2015.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules: it was served a day late. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

The evidence was delivered one day late. The tenant JT admitted that the tenants had reviewed the evidence and had time to understand it. As there is no undue prejudice to the tenant in allowing the landlord's late evidence, I allow the landlord's late evidence to be admitted.

Preliminary Issue – Admission of Tenants' Evidence

The tenants served the landlord with digital evidence. The landlord testified that he could not view the video and that, although he had a USB port on his computer, the data-storage device would not fit in any port.

Digital evidence is subject to Rule 3.10. Rule 3.10 requires that a party that wishes to rely on digital evidence must provide the other party with at least seven days with full access to the materials. Rule 3.10 also requires the serving party to confirm that the responding party can access the digital evidence.

The tenants and landlord agreed that the tenants did not confirm to ensure that the landlord could access the digital evidence. At the hearing, I explained to the parties the various options available to them regarding admission of evidence and adjournments. I explained to the parties that the decisions regarding admission of evidence or any adjournment were subject to my discretion to as well. I informed the parties that I had viewed the digital evidence and that it consisted of one recording taken on 17 March 2015. All three individuals were present during the recorded conversation. The tenant ST confirmed that the video had not been edited. The landlord testified that he remembered what occurred that day. The landlord consented to the admission of the tenants' digital evidence. On the basis of the landlord's consent and his participation in the entirety of the recorded interaction, I admit the video evidence.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to an order that the landlord comply with the Act, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began in February 2012. Monthly rent is $1,225.00 and is due on the first. The landlord testified that he continues to hold the tenants' security deposit in the amount of $600.00, which was collected at the beginning of this tenancy. The rental unit is a cottage on the same residential property as the landlord's home. Occupant L resides on the residential property; at various times within the landlord's home or on a trailer located on the residential property. The landlord houses multiple dogs on the residential property as part of a canine rescue group.

The tenant ST testified that occupant L, who is also the landlord's dog walker, does not leash the landlord's dog B. The tenant ST testified that in the fall of 2014, the landlord's dog B ran at the tenants' daughter P.

On or about 16 March 2015, the dog B ran at the tenants' daughter P when she was playing on the cul-de-sac with two neighbourhood children. At the time the dog B was being walked by the occupant L. The tenant ST testified that he was able to drive his truck between the dog B and his daughter P. I was provided with letters from the mother and grandmother of the other children that corroborate the event.

The landlord testified that the tenant ST came to the landlord's home and engaged in a confrontation with the landlord. The landlord testified that the tenant threatened to "punch" the occupant L. The landlord testified that the tenant threatened to run over the dog B if it happened again. The landlord testified that this confrontation upset him. In particular, the landlord was upset about the threat made against the dog B. The landlord testified that he found the tenant ST threatening. The tenant ST denied that he threatened to punch the occupant L or that he threatened to run over the dog B.

A person contacted by-law enforcement regarding the dog B and occupant L. The tenant ST testified that a by-law officer contacted him regarding the complaint.

On or about 17 March 2015, the landlord came to the tenants' rental unit. The landlord and tenants were involved in an altercation. The landlord believed that the tenants had initiated the complaint with by-law enforcement. The tenant ST testified that he believed that the issues between the tenants and landlord had been resolved by the end of this conversation.

I was provided with video evidence by the tenants of this interaction. I have viewed the video in its entirety. The landlord appeared restrained. The landlord defended the dog B. In particular the landlord expresses frustration with the situation as he then understood it. By comparison, the tenants are outwardly hostile. The tenants interrupt the landlord and speak over each other. The tenant JT is especially aggressive. At one point in the conversation the tenant JT approaches the landlord gesturing aggressively, waiving her arms, jumping, pointing, yelling, and stomping. The landlord attempts to walk away and the tenant JT grabs his shoulder before being called away by the tenant ST. After five minutes of recorded berating by the tenants the landlord does begin to yell back. The landlord says "everyone can leave". The tenant TS accuses the landlord of threatening them. The tenant ST refers to the landlord as a "blockhead".

The landlord testified that at some point in late March he became aware that the tenant ST had made certain postings on his social networking account. The landlord's spouse had been told by other residents of the community about the social-media posting. I was provided with copies of the social-media postings. The posting begins with a post regarding the occupant L and his control over the dogs he walks. The conversation moves towards suggestions of involving bylaw enforcement. A poster DD suggests talking to the individual dog owners. In a subsequent post a poster FB brings up the landlord: "Serve the landlord".

The tenant replies:

> *…Feeling discouraged. Our landlord has [the occupant L] living at his place which is right by ours [poster name] so the kids can't even play in the cul de sac without the possibility of getting attacked. Neighbours kids were there too and they al were affected. Sad day when playing on the computer is safer than playing outside.*
>
> [as written]

FP posts:

> *Let's buy him out !!!!*

The tenant ST posts:

> *You wouldn't want to live in that house now, it's full of dog shit and piss. Those dogs and them live in absolute squalor.*

A poster CvK suggests calling the SPCA. Another post GZ suggests that if the dogs are living in "squalor" then it could be considered animal abuse.

The tenant ST posts:

> *No I don't think the dogs are being mistreated if fact they're living in a giant half million dollar litter box. I'd say they got it pretty good! In fact [occupant L] now lives with my landlord who is the owner of all these dogs so it becomes a sensitive issue. I approached them both and he suggested we take the kids to a course on how to deal with aggressive dogs!*

The tenant ST testified that the purpose of these posts was to raise the issue of dangerous dogs with the community.

The landlord is never mentioned by name. The landlord denies the accusation that he lives in squalor. The landlord testified that he was worried about how these comments would affect his reputation in the community. The landlord testified that learning about the social-media posting triggered him to try to end the tenancy. On 29 March 2015, the landlord issued a "three-month notice" to end tenancy. The landlord testified that he created this "three-month notice" because he wanted to provide the tenants with more time to vacate so as to not disrupt the tenants' daughters' schooling. This notice was not in any form provided by the Residential Tenancy Branch.

The landlord testified that on 26 May 2015 he attended at the rental unit to ask when the tenants would be vacating the rental unit. The landlord testified that the tenants told him that they were not leaving. On 26 May 2015, the landlord personally served the 1 Month Notice to the tenants. The 1 Month Notice set out that it was given as the tenant or person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord. The 1 Month Notice set out an effective date of 30 June 2015.

The tenants submit that they did not do anything to warrant an end to this tenancy for cause. The tenant JT testified that she views the issuance of the “three-month notice” as an act of aggression.

Analysis

This application is not about whether or not the conduct of the occupant L or the dog B was above reproach: this application is about whether the tenants’ conduct in response to these alleged issues supports the issuance of the 1 Month Notice.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

On 29 May 2015, the landlord served the tenants with the 1 Month Notice. The 1 Month Notice set out that it was being given as the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified as to three interactions that could support the 1 Month Notice:

1. on 16 March 2015, the interaction between the tenant ST and the landlord;
2. on 17 March 2015, the interaction among the tenants and the landlord; and
3. on or about 16 through 18 March 2015, the social-media postings by the tenants.

The landlord testified that, on 16 March 2015, the tenant ST made threats to the landlord at his home against the occupant L and the dog B. The tenant ST denies these threats. There is no corroborating evidence for either version of events. Where such a situation exists, I am required to make a credibility finding. On balance, I prefer the evidence of the landlord. I prefer the landlord’s testimony as I found that he provided his evidence in a forthright manner. As well, I find his version of events more plausible (especially in light of the video evidence discussed below). Accordingly, I find that on 16 March 2015, the tenant ST threatened the dog B and the occupant L. I accept the landlord’s testimony that he found this interaction threatening.

I was provided with a video of the interaction of 17 March 2015. The tenants appear to be the aggressors in the video. Both tenants are observed to yell and berate the landlord. Of particular relevance to this application was the tenant JT’s conduct. The tenant JT was observed to be gesturing aggressively, waiving her arms, jumping, pointing, yelling, and stomping. I understand that the tenants’ take the safety of their children very seriously (and rightfully so), but this conduct is not appropriate. I do not agree with the tenants that suggesting an end to the tenancy is an inappropriate act or “threatening” act on the landlord’s part.

I find that the tenants’ conduct on 16 and 17 March 2015 significantly interfered with or unreasonably disturbed the landlord. As such, I find that the 1 Month Notice is valid. As these two events substantiate the 1 Month Notice there is no need for me to consider the social-media postings.

The landlord acted within the month (29 March 2015) to attempt to end the tenancy. The landlord did so with a notice of his own design. Pursuant to section 52 of the Act, a notice to end tenancy given by a landlord must be in an approved form. As the landlord did not use an approved the "three-month notice" was not valid. When the landlord discovered that the notice was not valid, he issued the 1 Month Notice in the correct form. I have not been provided with evidence of conduct by the landlord that would lead to the conclusion that the tenancy was reinstated.

For the above-noted reasons, I find that the 1 Month Notice is valid. The tenants' application to cancel the 1 Month Notice is dismissed without leave to reapply.

Pursuant to section 55 of the Act, where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenants' application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession. The tenants have paid for their use and occupancy of the rental unit for July; the landlord is entitled to an order of possession effective on or after one o'clock in the afternoon on 31 July 2015.

As this tenancy is ending, it is not necessary that I make an order that the landlord comply with the Act, regulations or tenancy agreement with respect to the issuance of the "three-month notice"; however, as noted above, a notice of the landlord's own design is not a valid notice.

Conclusion

The tenants' application is dismissed.

The landlord is provided with a formal copy of an order of possession effective one o'clock in the afternoon on 31 July 2015. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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

Dated: July 15, 2015

Residential Tenancy Branch