Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, O

Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an "other" remedy.

While the landlord JK (the landlord) attended the hearing by way of conference call, the tenants did not, although I waited until 1004 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlord confirmed she had authority to act on behalf of the other landlords.

At the hearing, the landlord asked for an order of possession in the event I found the 1 Month Notice was valid. The landlord stated at the hearing that the tenants had indicated their intent to vacate the rental unit on or before 1 November 2015. The landlord stipulated that, in the event I granted an order of possession in the landlords' favour, the landlords would accept an order of possession dated for 1 November 2015.

The landlord provided sworn, uncontested testimony that on 12 July 2015 she served the tenant JT with the 1 Month Notice. The landlord testified that the tenant JT refused to take the 1 Month Notice. The landlord testified that she told the tenant JT what the document was and left the 1 Month Notice on the front table. On the basis of this evidence, I am satisfied that the tenants were served with the 1 Month Notice pursuant to section 88 of the Act.

The landlord testified that she served the evidence to the tenants by regular mail on 8 September 2015. On the basis of this evidence, I am satisfied that the tenants were deemed served with the landlords' evidence pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an order of possession? Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession? Are the tenants entitled to an "other" remedy?

Background and Evidence

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

This tenancy began 15 October 2013. The parties entered into a written tenancy agreement on 15 October 2013. Initially monthly rent was $850.00. Later monthly rent was raised to $870.00. The tenancy agreement sets out that rent is due on the fifteenth of the month. The landlords collected a security deposit of $400.00 and a pet damage deposit of $300.00.

The rental unit is a basement suite. Another family occupies the upstairs portion of the residential property.

The addendum to the tenancy agreement sets out that rent is to be paid by electronic transfer. The landlord testified that the landlords drafted this agreement. The landlord testified that it was the tenants' choice whether or not to pay rent by this method, but that the landlords stated that this method was the easiest way. The addendum is silent on fees. The landlords submit that the tenants are responsible for the landlords' fees for accepting rent by this method. The landlords had a practice of charging the tenants for the $4.00 bank fee associated with the landlords' acceptance of an electronic transfer.

On 10 July 2015, the landlords issued the 1 Month Notice to the tenants. The 1 Month Notice was served 12 July 2015. The 1 Month Notice set out an effective date of 15 August 2015. The 1 Month Notice set out that it was given as:

- the tenant(s) are repeatedly late paying rent; and
- the tenant(s) or person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlords did not provide me with a ledger, rather, the landlords provided me with emails spanning the course of the tenancy. The landlords submitted that I should look to the emails to determine on which occasions rent was late.

The landlord testified that she would receive the utility bills on or about the twelfth of the month. The landlord testified that she would forward a demand to the tenants for payment within one or two days of receiving the invoice. The landlord testified that she considered a utility payment late if it was received past the due date on the invoice.

I was provided with a property use complaint form filled out by the upstairs occupant. The occupant complained about the tenants' dogs barking. The landlord did not know if this complaint was filed or if the complaint resulted in any investigation. The landlord testified that the upstairs family complained about the tenants fighting. The landlords did not provide any statement from the upstairs occupant. The landlords did not call the upstairs occupants to testify.

On or about 28 June 2015, the tenant(s) power washed a swastika into the front driveway. The landlord testified that the swastika was directed at the upstairs neighbour with whom the tenants did not get along. I was provided with a photograph of the swastika. The upstairs tenant complained about the symbol and contacted the landlord. The landlord filed a police report in respect of this incident. The police attended at the rental unit and asked the tenants to remove the swastika. The tenants complied. The police found that the act was not a hate crime. The landlord testified that she found this offensive as she is of Jewish descent.

There was no 10 Day Notice provided.

Analysis

The tenants applied for an "other" remedy. The tenants did not attend the hearing. As the tenants have not provided any evidence in support of their claim for an "other" remedy, this portion of the tenants' claim is dismissed without leave to reapply.

The tenants applied to cancel a 10 Day Notice. Neither the tenants nor the landlords provided a copy of any such notice. On the basis that there was no copy of a 10 Day Notice provided by the landlords, the landlords have not shown the existence or validity of such a notice and are not entitled to an order of possession for it. As such, the 10 Day Notice (if any such one exists) is of no force and effect. The landlords are not entitled to an order of possession on the basis of a 10 Day 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 12 July 2015, the landlords served the tenants with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenants are repeatedly late paying rent; and
- the tenants or person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

Paragraph 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent. *Residential Tenancy Policy Guideline,* "38. Repeated Late Payment of Rent" provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b).

The landlords did not provide a ledger. I asked the landlord to provide me with the dates that the tenants paid rent late. The landlord referred me to the package of emails. I am not a forensic accountant. It is the responsibility of a party to provide an organized and cohesive package of evidence to me. I will not sift through years of emails and draw my own conclusions on which dates rent was possibly late: that is not how adversarial proceedings function. As well, the landlords appear to have changed midway through the tenancy the rent due date. The tenancy agreement sets out that rent is due on the fifteenth; however, email correspondence seems to indicate that the landlords would consider rent late if it was paid after the first of the month.

Further, the landlord did not take into account the requirement pursuant to paragraph 46(6)(b) for a written demand for payment of utilities 30 days prior and instead used the invoice due date. As well, I have serious concerns about the landlords' ability to charge the $4.00 fee in respect of the electronic payment on the basis that the tenancy agreement does not provide for this fee and in any event section 7 of the *Residential Tenancy Regulation* limits the types of fees that may be charged by a landlord. On the basis that the landlords failed to show which dates rent payments were made late and what amounts if any were late, this reason cannot validate the 1 Month Notice.

Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlords did not provide a written statement from the upstairs occupant. The landlords did not call the upstairs occupant as a witness in this hearing. Without some evidence as to the effects the tenants' conduct had on the upstairs occupant, I find that the landlords have failed to show, on a balance of probabilities, that the tenants have significantly interfered with or unreasonably disturbed another occupant of the residential property.

The landlord testified that she was disturbed by the swastika. The landlord indicated that she was particularly disturbed by the symbol because of her family heritage. I accept that the swastika on the driveway represents an unreasonable disturbance of the landlord. The tenants ought to have known that marking the front driveway with a symbol associated with one of the largest human rights atrocities in history is disturbing. I was not provided with any reason why the swastika would be reasonable in these circumstances. Accordingly, I find on a balance of probabilities that the tenants unreasonably disturbed the landlord of the residential property. As this ground for cause is substantiated, 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 landlords have made an oral request for an order of possession, I am obligated by the Act to grant the landlords an order of possession. As the landlords have agreed to an order of possession dated for 1 November 2015, the order of possession is effective on this date. This order may be served on the tenant(s), filed with the Supreme Court of British Columbia and enforced as an order of that court.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord is provided with a formal copy of an order of possession effective one o'clock in the afternoon on 1 November 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: October 02, 2015

Residential Tenancy Branch