Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEAK PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, ERP, RP, RR, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 15, 2016 ("1 Month Notice"), pursuant to section 47; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to make emergency repairs for health or safety reasons, pursuant to section 33;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The "landlord owner" of the rental unit, SH, and his two agents, "landlord JL" and "landlord CS," from the "landlord company" named in this application (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord JL confirmed that he is the property manager and landlord CS confirmed that he is the realtor, both for the landlord company, and that both had authority to speak on behalf of the landlord company as agents at this hearing. The landlord owner confirmed that the landlord company managed his rental unit. This hearing lasted approximately 93 minutes in order to allow both parties, particularly the tenant who spoke for most of the hearing time, to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application and the tenant was duly served with the landlord's written evidence. The tenant confirmed that he had received and reviewed the landlord's written evidence and was ready to proceed with this hearing, despite the fact that he had only received the evidence five days before this hearing, contrary to Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Accordingly, I proceeded with the hearing and considered the landlord's written evidence in my decision.

The landlord confirmed that the tenant was personally served with the landlord's 1 Month Notice on February 16, 2016. The tenant confirmed receipt of the 1 Month Notice. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on February 16, 2016.

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an Application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 1 Month Notice and if there was enough time to hear the tenant's remaining claims, I would hear them. At the end of the hearing, I advised both parties that there was not enough time to hear the tenant's remaining claims, as 93 minutes had already expired in the hearing. I have addressed the remainder of the tenant's claims in the analysis and conclusion sections of this decision, below.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the $100.00 filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 25, 2015. Monthly rent in the amount of $2,150.00 is payable on the first day of each month. A security deposit of $1,000.00 and a pet damage deposit of $1,000.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice, with an effective move-out date of April 1, 2016, for the following reason:

- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Tenant has engaged in illegal activity that has, or is likely to:*
  - *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord claimed that the tenant interfered with the landlord's right to lawfully show the rental unit to prospective purchasers. The tenant disputed the landlord's 1 Month Notice, stating that the landlord had an unreasonable number of open houses at the rental unit, beginning in December 2015, and the landlord did not apply to the RTB in order to resolve the issue as required. The tenant agreed that he allowed the landlord one hour to conduct the first open house and then denied entry for the second open house until the landlord paid him money, as per a settlement proposal from the tenant. The tenant said that he did not deny entry to the landlord and that he is entitled to quiet enjoyment of his unit so he was allowed to restrict the landlord's hours of showing. The tenant said that the landlord did not show up to the unit on all occasions when notices to enter were given.

The landlord stated that the tenant threatened to harm the landlord, by way of a text message. The landlord produced a copy of the message. The landlord said that it was an indirect threat but he stopped communication with the tenant after the message. The tenant said that he did not intend the message as a threat but only a warning so the landlord would not find himself in trouble with his career, not his personal safety. He said that the message came across wrong because of an English language barrier.

Analysis

1 Month Notice

According to subsection 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on February 16, 2016, and

filed his Application on February 24, 2016. Therefore, he is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify, on a balance of probabilities, the reason set out in the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord proved that the tenant significantly interfered with the landlord. I find that the tenant prevented the landlord from gaining reasonable and lawful access to the rental unit in order to conduct showings for prospective purchasers. I find that the landlord lost prospective purchasers, had to list the property for a longer period of time than anticipated and eventually removed the property from the sale listing, because of the tenant's behaviour. The tenant restricted the days and hours of showings and provided the landlord with incorrect information extrapolated from the RTB website stating that the landlord was required to serve him with notices of entry in person only. This limited the landlord's right to schedule last minute showings, required them to make firm appointments with prospective purchasers, resulted in cancellations and frustrated prospective purchasers, and required the landlord to travel long distances in order to serve the tenant personally with notices. The landlord provided information by way of letters, emails, notices of entry, and testimony to support its case. I find that the tenant's testimony and written evidence, that he refused entry unless the landlord paid him a certain amount of money, as well as his admitted restrictions on the hours of entry, demonstrates that he was significantly interfering with the landlord's lawful right to show the rental unit. I find that the landlord did not have or did not attempt to have an unreasonable amount of open houses at the rental unit.

As I have found that one of the reasons indicated on the landlord's 1 Month Notice is valid, I do not need to consider the other reason on the notice.

Therefore, I dismiss the tenant's application to cancel the landlord's 1 Month Notice, dated February 15, 2016. I find that the 1 Month Notice complies with section 52 of the *Act*. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective at 1:00 p.m. on April 30, 2016. Both parties agreed that the tenant paid rent in full for April 2016. I find that the tenant is therefore entitled to possession of the unit until the end of April 2016.

As the tenant was not successful in this Application, I find that he is not entitled to recover the $100.00 filing fee from the landlord.

As this tenancy is not continuing, I dismiss the tenant's Application for emergency and regular repairs, as well as a future rent reduction, without leave to reapply.

The tenant's Application for a past rent reduction from February 2016 until the end of this tenancy, and a monetary order for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply. During the hearing, I notified the tenant that he would be required to file a new application and pay a new filing fee if he decided to pursue the above claims further.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on April 30, 2016**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's Application to cancel the landlord's 1 Month Notice, to recover the $100.00 filing fee, for emergency and regular repairs, and for a future rent reduction, is dismissed without leave to reapply.

The tenant's Application for a past rent reduction from February 2016 until the end of this tenancy, and a monetary order for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

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: April 18, 2016

Residential Tenancy Branch