



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, OLC

Introduction

This hearing dealt with the tenant's 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;
- a order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony.

Preliminary Issue

At the outset the tenant has requested an adjournment of the hearing due to a "serious health problem" as per a written request to both the landlord and the Residential Tenancy Branch. The landlord disputed the request stating that it would be very prejudicial and that she does not think that there is anything wrong with the tenant. The landlord provided no evidence of her misgivings. The tenant provided testimony that he was medically unfit due to ongoing medical issues and was just starting recovery from an automobile injury on August 29, 2016, just 2 days prior. The tenant indicated that he is under the care of his doctor and had recently submitted late evidence in the form of 2 letters from his doctor and the emergency room doctor. The tenant indicated that he would be ready to proceed within 2 to 4 weeks for the adjournment. I find that although the tenant's application to cancel the notice to end tenancy is prejudicial to the landlord, it would be against the interest of justice to continue the hearing due to the tenant recovering from an automobile injury with ongoing medical issues which could impair his participation in the hearing. As such, the tenant's request for an adjournment is granted.

The hearing was reconvened on September 22, 2016 where both parties attended via conference call, made submissions and presented evidence.

It was clarified at this time that the tenant's request for an order requiring the landlord to comply with the Act, regulation or tenancy agreement was without specifics and not detailed on the

application for dispute. As such, this portion of the tenant's application is dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

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 respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2016 on a fixed term tenancy ending on January 1, 2017 as shown by the submitted copy of the signed tenancy agreement dated March 30, 2016. The monthly rent is \$700.00 payable on the 1st day of each month and a security deposit of \$350.00 was paid on April 1, 2016.

The tenant seeks an order cancelling the 1 Month Notice dated July 5, 2016. The landlord seeks an end to the tenancy and to obtain an order of possession.

Both parties agreed that on July 5, 2016, the landlord served the tenant with the 1 Month Notice for cause. The 1 Month Notice sets out an effective end of tenancy date of August 5, 2016 and 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;
 - put the landlord's property at significant risk.

The landlord provided affirmed testimony that the tenant was leaving the front garage door open and unattended causing her garage contents and her home to be unsecured and at risk. The landlord stated that on June 29, 2016 the tenant began leaving the front garage door open repeatedly for approximately a 3 week period. The landlord indicated that she had to repeatedly close the door and had notified the tenant to not leave the door open unattended. The tenant confirmed that he did in fact leave the door open unattended repeatedly, but that this was through a verbal consent received from the landlord. The landlord confirmed that she did give verbal consent to leave the front garage door open, but that it was for a limited time of few days and not a 3 week period to allow the tenant temporary access due to driveway issues. The tenant disputes this. Both parties confirmed that the landlord in an effort to keep the front garage door secured, locked it thus not allowing the tenant to open it.

The landlord also claims that the tenant had sent a letter dated July 4, 2016 to the landlord, which she feels was intimidating and that she feared for her safety. The letter states in part,

...Several times you have told me in the past, if you don't like it here you can leave! I am only accusing you of intimidation and using passive aggressive methods to force me to leave on my own accord. You tried to evict me in the past and did not have grounds to do so. You also wasted a lot of people's time including your own. You ultimately withdrew your eviction notice on June 28, 2016 I am accusing you of maliciously attempting to poison me and jeopardize and put my health into question...

The tenant disputes the landlords claim stating that "he writes how he speaks" and that there was "nothing threatening" in the letter.

The landlord stated that the tenant began leaving the rear garage door open and unattended causing her belongings in the garage and access to the house at risk. The tenant disputed this portion of the landlord's reasons for cause stating that the landlord had been leaving the rear garage door open and unattended. The landlord disputed this stating that she would never leave her possessions or home at risk.

Analysis

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.

I accept the evidence of both parties that the landlord has properly served the tenant with the 1 Month Notice dated July 5, 2016. The tenant filed for dispute of the 1 Month Notice on July 13, 2016 within the allowed 10 day period.

I also accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. I find that it highly unlikely that an agreement was made for the landlord to allow the front garage door to be left open indefinitely for approximately a 3 week period. I prefer the evidence of the landlord over that of the tenant that verbal consent was given by the landlord to leave the front garage door open for an interim period of time to allow the tenant temporary access to avoid issues regarding the driveway as opposed to being open over the 3 week period.

I reject the landlord's claim that she was intimidated based upon the submitted letter dated July 4, 2016 noted. In its entirety the letter can be interpreted as frustration over ongoing issues with the landlord. Although the landlord indicated that she felt unsafe, there was no result even after a report was filed with the local police. In the absence of any findings by the police I find that the landlord has failed to provide sufficient evidence to satisfy me that this letter was of "ongoing harassment" to the landlord. This portion of the landlord's reasons for cause is dismissed.

On the landlord's remaining listed reason for cause, the landlord has indicated that this was a continuation of the tenant leaving the front garage door being left open and the tenant leaving the back garage door open. I refer the former to my reasons noted above. On the latter the tenant has disputed this portion of the landlord's claim that he was leaving the back garage door open. The landlord was unable to provide any supporting evidence to satisfy me that the tenant had been leaving the back garage door open and unsecured. As such, the landlord has failed to provide sufficient evidence to satisfy me of this portion of her claim and is dismissed.

Conclusion

The tenant's application is dismissed.

The 1 Month Notice dated July 5, 2016 is upheld. The landlord is granted an order of possession.

The landlord must serve the tenant 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.

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: September 22, 2016

Residential Tenancy Branch