Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

1. To cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act;* and

2. Recovery of the filing fee pursuant to section 72 of the Act

The tenant was represented at the hearing by an advocate ("IR"). Along with the advocate, a translator, and a witness were present at the outset of the hearing. SB, the Director of Operations for NCS appeared for the landlord. Maintenance worker, KM for NCS was present at the start of the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions evidence under oath. Despite the presence of witnesses, neither party called on them to testify prior to the conclusion of the hearing.

Based on the sworn testimony at the hearing, I accept that the landlord was properly served by the tenant with the Application for Dispute Resolution hearing package ("Application for Dispute") as per section 89 of the Act and that the tenant was properly served by the landlord with the 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 88 of the Act.

At the outset of the hearing, IR requested an adjournment of the matter. IR felt it necessary for a Vancouver Police Department report that had not yet been received, to be entered into evidence. Despite the fact that the landlord consented to an adjournment, I felt that this report was unnecessary as witnesses were present should clarifications have been needed on any details.

Issues to be Decided

- Should the landlord's 1 Month Notice be cancelled? If not, should an Order of Possession be issued for cause?

- Is the tenant entitled to recover the filing fee?

Background and Evidence

The landlord testified that he issued a 1 Month Notice pursuant to section 47(d)(ii) of the Act due to an incident that occurred between the tenant and one of the building's maintenance workers ("KM") on October 20, 2016. The landlord cited an addendum for crime free housing that the tenant signed when this tenancy began. He maintained that this was evidence that a threat to KM constituted a violation of the provisions contained within the addendum and therefore should stand as cause to end the tenancy.

The landlord explained that KM was an independent contractor who had been employed by NCS for 22 years and services multiple sites. The landlord stated that NCS has 20 properties in its portfolio. On October 20, 2016, the contractor entered the suite to perform major renovations that were required on the unit due to flood damage. The landlord testified, that as per section 29(1)(b) of the *Act,* a notice of entry was placed on the front door of the rental unit on October 13, 2016 informing of a contractor entering the suite to perform necessary repairs on October 19, 20, and 21, 2016. The tenant disputed that he ever received this notice. Despite the tenant maintaining that he did not receive a notice of entry, the tenant stated that he allowed KW to enter his suite to perform the necessary repairs. During the course of the work being performed, an incident occurred between the tenant and KW. The details of the conflict are in dispute, with both sides maintaining that they had witnesses who observed this dispute and could support their accounts of the events of the day. Neither party called witnesses to speak to this issue.

Analysis

A 1 Month Notice requires the landlord to bear the burden of proof in demonstrating that they have sufficient cause to issue such a notice. For direction on this matter, I refer to section 47(1)(d)(ii) of the *Act* which provides details of the grounds that must be present for a notice for cause to be valid.

> *(1) A landlord may end a tenancy by giving notice to end the tenancy if:*
>
> *(d) the tenant or a person permitted on the residential property by the tenant has:*
>
> *(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant*

There is no doubt that the contractor involved in this dispute has a relationship with NCS, he is not however a “landlord” as per the definitions contained within Part 1, Division 1 of the Act, nor is he “another occupant”.

Subsection 47(1)(d)(ii) describes the needs for a *serious jeopardizing* of health and safety to occur. I find that one incident, where the landlord has failed to demonstrate that anyone was physically harmed does not meet this threshold. The landlord described a previous incident that occurred on July 8, 2016 involving the tenant yelling at the accounting staff from NCS. While I do take note of this, I do not see the matter leading to issuance of the 1 Month Notice as being part of a trend or pattern.

It may be argued that a landlord’s maintenance worker falls within the second part of subsection (ii) which contains the words “interest of the landlord.” I appreciate that this may be a contentious issue, but it was not raised by the landlord during the course of the hearing. Furthermore, the landlord testified that NCS employs a large pool of maintenance workers who service 20 properties. Any further interaction between the tenant and the maintenance worker involved in this dispute would therefore be largely avoidable.

The landlord included in his evidentiary package and in his testimony, an addendum signed by the tenant, agreeing to follow certain rules to ensure that the premises were kept safe. This pledge contains very important safety information for the tenant. However, the landlord cannot use this type of addendum as justification to obtain an end to tenancy that would not otherwise constitute grounds to end a tenancy under the

Act. For these reasons, I find that the landlord has not met the burden of proof to the extent required to obtain an end to this tenancy for the reasons cited on the 1 Month Notice. I allow the tenant's application to cancel the 1 Month Notice.

As the tenant was successful in his application, the landlord must bear the cost of their filing fee. Pursuant to section 72 of the Act, I find that the tenant is entitled to recover the $100.00 filing fee.

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, which is no longer of any force or effect. This tenancy continues until ended in accordance with the Act.

I issue a monetary Order in the tenant's favour in the amount of $100.00, which enables the tenant to obtain the recovery of his $100.00 filing fee for this application. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

As this tenancy is continuing, the tenant may also choose to recover this filing fee by reducing a future monthly rental payment by $100.00, on a one-time basis in order to implement this order.

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 20, 2016

Residential Tenancy Branch