



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

A matter regarding ROYAL LEPAGE MERRITT REAL ESTATE SERVICES
and [tenant name suppressed to protect priv

DECISION

Dispute Codes

Landlord's Application dated November 24, 2016: OPC, FF
Tenant's Application dated November 14, 2016: CNC

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act"). The tenant is seeking to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice") (the "Tenants' Application").

The landlord is seeking an order of possession for cause and recovery of the filing fee paid for this application from the tenant (the "Landlord's Application").

The landlord's agent (the "landlord") and the tenant appeared at the teleconference hearing. The landlord and tenant gave affirmed testimony. The landlord appeared with a witness, H.T. ("Witness H.T."), who also gave affirmed testimony. Witness H.T. appeared at the hearing only when she was required to give testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlord testified that the tenant was served with the same package of evidence as that filed with the Residential Tenancy Branch which included photographs. The tenant acknowledged that he received the landlord's evidence package but said that the photographs were not included in the package. The tenant, however, indicated that he wanted to proceed with the hearing as scheduled nonetheless.

Issue(s) to be Decided

- Should the landlord's One Month Notice be cancelled?
- Is the landlord entitled to an order for possession for cause?
- Is the landlord entitled to recover of the filing fee paid for this application from the tenant?

Background and Evidence

The undisputed evidence established that a month to month tenancy started on March 1, 2013 pursuant to a written agreement signed by the tenant on February 26, 2013.

The landlord and the tenant agreed that the landlord served a One Month Notice dated November 7, 2016 by posting a copy on the tenant's door on November 7, 2016. The One Month Notice indicates that the tenant was required to vacate the rental unit on December 31, 2016.

The reasons stated in the One Month Notice were as follows:

- that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- that the tenant has caused extraordinary damage to the unit/site or property/park; and
- that the tenant has not done required repairs of damage to the unit/site.

Testimony of Landlord and Witness H.T.:

The landlord testified that there were a number of different complaints that had been made about the tenant from other occupants. The landlord testified that she notified the tenant about each of the complaints in writing, however, the tenant has not addressed the concerns.

The landlord submitted copies of the notices sent to the tenant. The landlord also submitted two unsigned and undated brief written statements by two separate occupants who identify their unit numbers in their statements, but not their names.

A summary of the landlord's complaints against the tenant are as follows:

- Cleanliness

The landlord submitted photographs of the front porch area of the tenant's unit which she says were taken sometime in November 2016. The landlord complained about the condition of the porch and exterior area shown in the photographs.

The landlord complained that the exterior was a mess with unsightly debris. The photographs show that the tenant had a mattress on the porch, wood, garbage and other items filling his front area. The landlord testified that she sent the tenant a notice on June 16, 2014 informing him of a complaint about the condition of his deck. He was asked to remove all debris, including garbage, couches and a camper by March 13, 2015. On October 8, 2015, another notice was sent asking the tenant to clean his front area by October 16, 2015. A final notice was sent on August 29, 2016 asking the tenant to clean his front porch by September 7, 2016. The landlord testified that the tenant has not cleaned the area and the exterior still resembles the condition shown in the photographs.

The landlord testified that the condition of the interior resembles the exterior. There were no photographs of the interior. Witness H.T. testified that she walked through the tenant's unit on September 30, 2016. Witness H.T. testified that the front door of the stove is missing; a light fixture was damaged; floors are wrecked; and carpets are damaged by spills that exceed normal wear and tear. Witness H.T. described the interior as non- hygienic.

- Noise

On September 30, 2015, the landlord sent the tenant written notice informing him about a complaint about the noise level coming from his unit and from his air conditioner. The landlord testified that there are complaints about loud music coming from the tenant's unit late at night. Loud music late at night was a complaint set out in one of the unsigned and undated written statements.

- Erratic Driving

On August 17, 2016 the landlord sent the tenant written notice of a complaint in regards to the tenant's erratic driving in the parking lot. The written notice indicates that it was his second warning. The landlord testified that the tenant exits his unit with excessive speed and burns his tires kicking up rocks. The landlord testified that the tenant has not

corrected his driving. The landlord testified that the other occupant's vehicles are at risk of damage by the flying rocks. The landlord also testified that the other occupants are disturbed by this erratic driving. An occupant, who submitted an undated and unsigned written statement, indicates that the tenant gives him the finger when he asks him to slow down.

- Threats

The landlord testified the tenant had made threats against another occupant and his dog. In one of the unsigned and undated written statements, the occupant indicates that the tenant had made a slashing gesture towards his throat which he reported to the RCMP. The occupant also indicates that the tenant had threatened to kill his dog. There were no other particulars.

- Unlicensed Vehicles

On March 2, 2015, the tenant was sent written notice to remove his unlicensed vehicles from the parking lot which the tenant was supposed to have removed by February 27, 2015.

Testimony of Tenant:

The tenant denied all the allegations made against him.

With respect to the exterior of his unit, the tenant testified that he cleaned up some garbage on his deck a couple of days ago. He testified that all he had on his porch now was a little stored cedar wood. He acknowledged having a mattress on his porch which he said he removed a couple of weeks ago. The tenant testified that the mattress was only on his porch for a couple of days.

With respect to the interior of his unit, the tenant acknowledged that the window on the oven is shattered. The tenant testified that the floor may be ripping up but that the carpets are fine. The tenant testified that there is no damage to the interior of his unit.

The tenant denied that he made threats against the other occupant and his dog.

The tenant denied driving erratically. The tenant testified that his driving is fine when he exits his unit and that he doesn't understand what he is doing wrong.

The tenant denied playing loud music late at night. He testified that he has only had one or two parties while living there.

The tenant testified that he felt singled out and picked on.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows.

After considering all of the written and oral evidence submitted at this hearing, I accept the evidence of the landlord and Witness H.T. that the exterior of the tenant's unit is in the same condition as shown in the photographs. The clean-up efforts that the tenant described were minimal compared to what would be required to clean up the debris shown in the photographs. The tenant did not provide any additional evidence to support his oral testimony describing the condition of the exterior of his unit.

Section 32 of the *Act* is explained in Policy Guideline #1 and requires the tenant to maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit and property. I find that the condition of the exterior of the tenant's unit falls below this standard. The tenant was given plenty of opportunity to clean up the exterior area of his rental unit and did not do so. As a result, I find that the tenant is unreasonably disturbing the landlord and other occupants by exposing them to such unsightly debris on a long term basis.

For these reasons, I find that the landlord has provided sufficient evidence that the tenant has unreasonably disturbed the landlord and other occupants by not maintaining a reasonable standard of cleanliness on his porch and surrounding outside area. Given the length of time that the debris has remained on the tenant's porch, I find that this is not a temporary situation but a long term problem that the tenant has failed to adequately resolve. Accordingly, I dismiss the tenant's application to cancel the One Month Notice and I uphold the Notice ending the tenancy.

As the tenancy is ending on the basis of the condition of the exterior of the tenant's unit, I need not address the other complaints against the tenant and the other reasons raised by the landlord in the One Month Notice which the tenant has disputed.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s.55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with s.52 of the *Act*.

I find that the landlord's One Month Notice complies with s.52 of the Act. As a result, I find the landlord is entitled to an order of possession.

As the landlord is being granted an order of possession for cause, I find the landlord is entitled to the \$100.00 filing fee for her application from the tenant.

Conclusion

I dismiss the tenant's application and I uphold the One Month Notice to end the tenancy.

The landlord is entitled to a monetary order in the amount of \$100.00 for recovery of the filing fee. The landlord is granted a monetary order in the amount of \$100.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to s.55 of the *Act*, I grant an Order of Possession to the landlord **effective two days after service of this Order** on the tenant. Should the tenant 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 final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 4, 2017

Residential Tenancy Branch