Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAMALO'S GROUP PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC O RR FF MNDC

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on November 30, 2016. The Tenant initially filed seeking an order to cancel a 1 Month Notice to end tenancy for cause; reduced rent for repairs, services or facilities not provided; for other reasons; and to recover the cost of the filing fee. On December 19, 2016 the Tenant filed an Amendment to his application for Dispute Resolution requesting a $12,748.16 Monetary Order. On December 22, 2016 the Tenant filed a second Amendment to his application for Dispute Resolution increasing his Monetary Order request to $25,000.00.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to cancel the Landlord's Notice to End Tenancy issued for cause and I dismiss the balance of the Tenant's claim with leave to re-apply.

The hearing was conducted via teleconference and was attended by the Landlords, the Landlords' witness (the Witness) and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlords confirmed receipt of the application and notice of hearing documents served by the Tenant. They stated they received a second package consisting of the Tenant's evidence on December 19, 2016 and a third submission including the amended application on January 3, 2017. The Tenant affirmed he served the Landlord with copies of the same documents that he had served the Residential Tenancy Branch (RTB). As per the aforementioned, I concluded the

Tenant's application, hearing documents, and initial volume of evidence was served upon the Landlords within the required timeframes. As such I considered those submissions as evidence for these proceedings.

On December 20, 2016 the Landlords submitted 36 pages of evidence to the RTB. The Landlords affirmed they served the Tenant with copies of the same documents that they had served the RTB. The Tenant acknowledged receipt of those documents and no issues regarding service or receipt were raised. During the hearing the Tenant stated that he did not receive a copy of the second page of the 1 Month Notice in the Landlord's evidence package. The Tenant initially stated the package had not been taken apart and that he left it all together for this hearing. When I attempted to clarify the order in which the documents were before the Tenant during the hearing, he changed his former response to state the staple had fallen out of the Landlords' evidence and he had a lot of loose papers in front of him.

After consideration of the foregoing inconsistent testimony, I favored the Landlords' submission that the Tenant was served copies of the exact same documents in the same format as the RTB was served. As such I considered the Landlords' submissions as evidence for these proceedings.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. I have considered all relevant submissions; however, not all submissions are referenced in this Decision.

Issue(s) to be Decided

1) Have the Landlords met the burden of proof to uphold the 1 Month Notice to end tenancy for cause (the Notice) issued November 19, 2016?
2) If so, should the Landlords be issued an Order of Possession?

Background and Evidence

A copy of the written tenancy agreement was submitted into evidence and indicated the Tenant entered into a month to month tenancy which commenced on March 15, 2013. Rent as per the tenancy agreement was $875.00 payable on the first of each month. A security deposit of $620.00 was transferred over to the current tenancy from the Tenant's previous tenancy in a different rental unit. The rent had subsequently been increased to $923.00 per month effective December 1, 2016.

I heard the Tenant submit that he received three cheques ($137.50 + $34.00 + $11.00) from the Landlords as a refund for the difference in the required amount of security deposit. He stated his current rental unit demanded a lower rent of $875.00 at the beginning of that tenancy so his security deposit was reduced to half of that rent of $437.50. The Landlord confirmed they are currently holding $437.50 as the security deposit.

On November 19, 2016 the Landlord posted a 1 Month Notice to end tenancy to the Tenant's door. I heard the Landlords state that Notice was issued pursuant to Section 47(1) of the Act listing an effective date of December 31, 2016 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
    - Significantly interfered with or unreasonably disturbed another occupant or the landlord

I heard the Landlords state they wished to proceed with having the tenancy ended based on the aforementioned reasons listed on the November 19, 2016 Notice. The Landlords presented the following evidence in support of that Notice, as summarized below:

- The new building manager (building liaison hereinafter referred to as Landlord) was assigned to this building at the end of February 2016. She stated she was given a minimal amount of paperwork from the previous manager so she sent notices to all the tenants in the building asking them to provide her with the required information.
- On June 12, 2016 the Tenant wrote a letter to the owner complaining about actions taken by the building manager.
- The owner provided a copy of that letter to the Landlord. The Landlord then filed a police report on June 24, 2016, in response to the Tenant's letter, asserting that the Tenant's letter was threatening and berating.
- On October 1, 2016 the Landlord returned the Tenant's rent cheque by placing it through his mail slot with a sticky note indicating the required changes,
- On October 1, 2016 the Landlord received 35 texts in 40 minutes from the Tenant, as summarized in her written submissions. I heard the Landlord state that she interpreted some of those texts as being threats against herself and two other Tenants.
- On October 2, 2016 between 10:30 a.m. and 11:27 a.m. the Landlord received an additional 11 texts from the Tenant. The Landlord stated on her written submission that the Tenant "seems to have an unhealthy fixation on me".
- The Landlord served the Tenant a warning letter on October 2, 2016 outlining the aforementioned text messages stating those messages were "degrading, rude, and bordering on threatening". Sections of the *Act* were quoted and hi-lighted on that warning letter relating to the grounds for ending a tenancy where a tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. In addition, the warning letter stated "Please be advised that further similar incidents or circumstances may result in our issuing a Notice to end tenancy."
- On November 15, 2016 the Landlord was contacted by their landscaping contractor who informed her of how the Tenant had made "abusive/aggressive" comments and gestures toward him while he was conducting his work. The landscaper summarized those events in an email to the Landlord on November 16, 2016 as submitted into evidence. The Landlord argued the landscaper was conducting his work as their contractor and that work was being performed within the regulated noise bylaw times.

- On November 17, 2016 the Owner attended the rental unit with a maintenance contractor to conduct a scheduled inspection. The Owner testified that when she first attended the unit the Tenant appeared to be shocked that she was there and was reluctant to let them into the suite, despite their previous notice of entry. I heard the Owner stated that during the inspection the Tenant was agitated, rude, and was angry they were there. The Tenant refused them access to the bedroom and when they looked under the kitchen sink and saw the leak the Tenant slammed the cabinet door, shut and then swung open the fridge door, and started pulling things out while he stated "do you want to snoop more?" The Owner submitted that they made the inspection short due to the Tenant's behaviour and when they left he slammed the door behind them. The Owner stated the Tenant had asked another contractor to conduct the inspection the day before while he was there conducting repairs. She stated that contractor told the Tenant he would not be doing the inspection.
- Shortly after issuing the Notice the Landlord received a complaint from their new cleaning contractor on December 5, 2016, which was that contractor's first day of employment. That complaint was submitted in writing in the Landlord's evidence.

I heard the Tenant dispute the Landlords' submissions and then emphasis his arguments on the fact that he completed his rent cheques as per the instructions provided to him by the Landlord. I asked the Tenant if he sent the text messages to the Landlord on October 1st and October 2, 2016, as provided in the Landlord's evidence. He initially stated he did not send the text messages and continued to argue he had written four cheques out as per the Landlord's instructions.

Upon further clarification the Tenant confirmed he had sent more than one text to the Landlord on October 1st and October 2, 2016. I then heard him state he did not send the text messages listed in the Landlords' evidence as "they've been altered". I then asked the Tenant what had been altered he stated "she changed wording, she added a couple of words". The Tenant was not able to point out which words were added and then stated he did not submit copies of the text messages into evidence because he did not know he would need to keep them as he did not know he would be going to court.

I then heard the Tenant argue that his text messages were not a threat towards other tenants. He went on to say the other tenants had been harassing his girlfriend every time she parked her car. He stated the other tenants had approached his girlfriend while she was parking asking her why she was parking in that spot, a spot he asserted he had permission to park in.

The Tenant confirmed he wrote the letter and submitted it to the Owner in mid June 2016. The Tenant put a lot of emphasis on the Landlord's written submission which mentioned "letters", arguing he did not write two letters to the Landlord in June; he only wrote one letter to the Owner and not to the Landlord. The Tenant confirmed he had been contacted by the police after the Landlord filed a complaint against him. He argued that complaint went nowhere because it was false.

The Landlord later clarified she had made a typing error when she wrote her written submission and confirmed there was only one letter received from the Tenant in June. She also confirmed that letter had been addressed to the Owner, as stated earlier in her oral submissions.

I heard the Tenant deny ever speaking to the landscaper. I asked if he could describe the events that occurred with the landscaper and the Tenant said he was standing on his balcony minding his own business and the landscaper approached him. The Tenant stated “I simply had my ears plugged and never said anything to him”. I then heard the Tenant say the landscaper asked him if there was something wrong and the Tenant said he replied “it’s a little early to be blowing leaves”. The Tenant said he did not say anything else and noted that conversation took place around 8:15 a.m.

The Tenant denied saying the words that were written in the landscaper’s email to the Landlord. He argued that email was “100% false”. The Tenant asserted the landscaper was responding to a complaint the Tenant had made about him the week prior in an email he sent to the Owner. The Tenant did not submit copies of that email in his evidence.

The Tenant then changed his submission to state the landscaper was facing the other way and the Tenant simply stood up and plugged his ears. After that the landscaper came towards him and questioned him. He said it was not like he was on the ground getting into the landscaper’s face.

The Tenant submitted that a maintenance contractor was conducting work in his suite the day before the Owner’s scheduled inspection. The Tenant said he asked that contractor to conduct the inspection so the Landlord would not have to do it the next day. The Tenant stated the contractor left and returned an hour later to say he had good news that he was given permission to conduct the inspection so the Owner did not need to return the next day.

The Tenant stated that he was caught off guard when the Owner and a different contractor showed up the next day. The Tenant testified that he was not rude during that inspection, he simply pointed out stuff to the Owner. The Tenant stated that he asked the Owner not to go into his bedroom because his girlfriend was inside naked. I asked the Tenant if he asked his girlfriend to get dressed so they could conduct the inspection on the bedroom. He responded that his girlfriend might have had clothes on; he did not know for sure; and then he stated he told the Owner that he “preferred” that no one go into the bedroom.

The Tenant denied slamming the cabinet door and argued he did not open the fridge it was the Owner who opened his fridge. The Tenant stated that he asked the Owner what she was doing looking in his fridge and then stated he could not recall what her answer was.

I heard the Tenant state that he never had an interaction with the cleaning contractors. He then went on to describe the events of December 5, 2016 and stated it was not 3:30 p.m. rather the

events occurred closer to 4:30 p.m. when he heard banging in the hallway. He stated he could hear a vacuum and then several bangs against his door intended to “get his attention”. He said he opened his door, looked right and left, and he did not say one word before closing his door.

The Tenant argued this was “just a set up”. He stated he “wasn’t going to say that stuff” and the Landlord was just trying to get him out. He alleged that the first time he called the Landlord to provide his information she labelled him as being part of a mob. He stated the Landlord does not like him and all he does is sit in his apartment and deals only with the Owner not the Landlord.

The Witness affirmed that he accompanied the Owner during the inspection of the Tenant’s rental unit in mid November 2016. He described himself as being a big person due to working in construction for many years and that he does not get nervous around people.

I heard the Witness state that he initially thought the inspection would be “no big deal” and then about one minute after the inspection started he said it felt like the Tenant “was going to snap at any moment”. The Witness said the Tenant was “very volatile”. The Witness said that after the inspection he told the Owner the Tenant was dangerous and was going to snap.

I asked the Witness what made him think the Tenant was dangerous and going to snap? The Witness replied that he felt the Tenant was dangerous because of the Tenant’s body language; his actions; and how quick he was to mock them. The Witness then described how the Tenant pushed through them when they were looking under the sink to slam the cabinet door. He said the Tenant then slammed open the fridge telling them to snoop inside.

The Witness also described how the Tenant told them numerous times that they could not inspect the bedroom. He said the Tenant said “nope you can’t go in the bedroom; you can’t go in there; no you can’t go in the bedroom.” In closing, the Witness stated he would not let his wife or any of his own family around the Tenant as he seemed very volatile to him.

The Tenant was given the opportunity to ask the Witness questions and he declined. The Tenant was then given the opportunity to provide a response to the Witness’s testimony and the Tenant stated that he had nothing to say in response as that was the Witness’s version of what happened, not his version. Then the Tenant stated that he was of the opinion that he was served the Notice because he wrote the letter to the Owner to complain about the Landlord.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; the documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

I favored the Landlords' submissions over the Tenant's submissions as they were consistent and supported by documentary evidence and by the Witness's testimony. I found the Tenant's submissions to be inconsistent and unsupported by evidence. From his own testimony the Tenant confirmed sending numerous text messages to the Landlord and argued the Landlord had altered the contents of his text messages. When asked, the Tenant was not able to point out what had specifically been altered in his text messages. Furthermore, the Tenant initially denied speaking with the landscaper and as his testimony continued he confirmed speaking with the landscaper, albeit he asserted it was the landscaper who approached him and not him approaching the landscaper. I was not convinced the Tenant did not say anything to the cleaning contractor.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenant's explanations of the aforementioned events to be self-serving and improbable given the evidence before me. Rather, I find the Landlords' evidence to be plausible given the circumstances presented to me during the hearing.

Based on the totality of the evidence before me I find the Landlords submitted sufficient evidence to support the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. I make this finding, in part, as contractors hired by a landlord to conduct repairs or maintenance on a rental unit are acting as agents for that landlord during the performance of the jobs they were hired to complete. I accept the Landlords' submissions that the Tenant unreasonably disturbed those agents while they were conducting their work.

In addition, I accept the Tenant disturbed the Landlord by sending her an unreasonable number of text messages on October 1 and 2nd, 2016. Also, by his own submissions, the Tenant refused the Owner access to the bedroom during a pre-scheduled inspection which interfered with the Landlord's ability to conduct her business. As such, I dismiss the Tenant's application requesting to cancel the 1 Month Notice; without leave to reapply.

As the Tenant was not successful with his application, I declined to award recovery of his filing fee.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act. I also find the Notice was served upon the Tenant in a manner that complies with section 88 of the Act.

I then considered that the effective date of the Notice was December 31, 2016 and that payment for occupation for January 2017 would already have been paid, as there was no evidence before me to suggest the contrary. Accordingly, I have issued the Landlord an Order of Possession effective **January 31, 2017, at 1:00 p.m., after service upon the Tenant.** In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant’s request to cancel the 1 Month Notice was dismissed without leave to reapply. The Tenant’s request for monetary compensation was dismissed with leave to reapply. The Landlord was issued an Order of Possession effective January 31, 2017 at 1:00 p.m.

This decision is final, legally binding, 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 11, 2017

Residential Tenancy Branch