Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC – Landlords' application
CNC MNDC – Tenant's application

Introduction

This hearing was originally convened to hear matters pertaining to the Landlords' Application for Dispute Resolution relating to the 1 Month Notice to end tenancy issued December 19, 2016. The Landlords filed their application on January 13, 2017 seeking an Order of Possession for Cause.

The Tenant filed his application on December 30, 2016 seeking to cancel the 1 Month Notice issued December 19, 2016 and for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement. The Tenant's application was originally scheduled before another Arbitrator on January 26, 2017 who adjourned the matters and issued an Interim Decision. The Tenant's application was scheduled to reconvene to be heard with the Landlords' application on February 17, 2017, as it related to the issues of the 1 Month Notice. As such, this Decision must be read in conjunction with the January 26, 2017 Interim Decision.

This hearing was conducted via teleconference and was attended by the Landlord, G.A., and the Tenant. Each person gave affirmed testimony and the Landlord confirmed she would be representing both Landlords as her mother, B.H.B., was experiencing some medical issues. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing; in accordance with the Rules of Procedure. I also explained that I would not be dealing with all the dispute issues the Tenant had placed on his application during this hearing; pursuant to Rule of Procedure 2.3 which states that for disputes to be combined on an application they must be related. I explained that not all the items sought on the Tenant's application were sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I would be dealing with the Tenant's request to cancel the Landlord's Notice to End Tenancy issued for cause; and I dismissed the balance of the Tenant's application with leave to re-apply.

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 teleconference was managed by placing each person's telephone on

mute while the other party was presenting evidence. During the muting process I checked with each party to confirm they could hear what was being said and vice versa. It was not until the end of the hearing that the Tenant began to argue that he wanted to discuss his request for money. I explained the aforementioned again and advised that he could file another application if he wished to proceed with seeking monetary compensation.

Upon review of the service and receipt of evidence I heard the Tenant state as follows: the post office was far away; he did not drive; the weather had been bad but has recently cleared up; he focused his time on submitting and serving his own evidence; and he was busy so he did not have time to pick up his mail. Upon further clarification the Tenant confirmed he had not received the Landlord's evidence because he was "too busy" to pick it up from the mail.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

I informed the Tenant that I would not be adjourning this proceeding for a second time simply because he was "too busy" to go pick up his mail; as that would constitute an abuse of process and would prejudice the Landlord. I reminded the Tenant that the Arbitrator in the January 26, 2017 hearing had adjourned that hearing to give him time to pick up the Landlord's evidence. That Arbitrator wrote in the Interim Decision that she deemed the Tenant to have received the Landlord's evidence on January 25, 2017; five days after it was mailed. I told the Tenant that I would be considering all oral and documentary evidence that was before me and I proceeded with the hearing as scheduled.

The Landlord confirmed receipt of the Tenant's evidence and the Notice of reconvened hearing. She noted that the rental unit address had been written incorrectly on the Notice of hearing document. I advised the parties there had been a note on the file which indicated the Tenant had confirmed with an RTB staff member that he had made a clerical error when he wrote an incorrect address on his application for Dispute Resolution. It was that incorrect address which was later written on the Notice of reconvened hearing. The address has since been corrected in the Residential Tenancy Branch (RTB) records and the correct address is written on the front page of this Decision, pursuant to section 64(3)(c) of the Act.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although I was provided a considerable amount of evidence, including verbal testimony and written submissions, with a view to brevity in writing this decision I have only summarized the parties' respective positions below.

Issue(s) to be Decided

1. Should the 1 Month Notice issued December 19, 2016 be upheld or cancelled?
2. If upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties confirmed that the Tenant entered into a verbal month to month tenancy agreement with the Landlord's mother, B.H.B. That tenancy began sometime in March 2016. The Tenant was required to pay $500.00 rent on the first of each month plus the cost of some of the utilities.

The Landlord testified that her mother had recently been experiencing medical issues which were affecting her mental capacity so she has taken over duties as the Landlord. Upon review of her mother's bank records she has seen the Tenant had paid $150.00 towards the security deposit.

I heard the Tenant state that he thought he paid $250.00 as the security deposit and that he was required to pay the upstairs tenant money for internet and utilities. He stated he has paid everything with on-line banking so if needed he could get copies of all of his payments.

The Rental unit was described as being a duplex with each side having a different address number and two levels. In unit 4691 there was a print shop in the upper level and the lower level was filled with storage of the Landlord's mother's personal possessions. Unit 4693 had a bookstore in the upper level and the Tenant's rental unit in the lower level.

The Landlord submitted that the property had been listed for sale in October 2015, prior to the Tenant occupying the rental unit. I heard the Landlord state the Tenant had continued to display irate behaviours towards the realtors who were showing the property.

The Landlord testified that on December 16, 2016 the Tenant began calling the Landlord and her mother, late at night, yelling profanities at them; using strong language; and demanding money. I heard the Landlord state the Tenant threatened her that he "would make my life and my mom's life a living hell" and that they would not be able to get him out of the building.

The Landlord pointed to an email exchange between her and the Tenant on December 18, 2016 which outlined the above conversation and how the Tenant had called her demanding $100.00 every time a realtor wanted to show the rental unit and $3,000.00 for him to agree to move out. The Landlord also noted an email she received from their realtor on January 4, 2017 which outlined how they had to deal with the Tenant's refusal

to allow them to show the unit and his aggressive behaviours while showing the rental unit to prospective buyers.

The Landlord stated that she felt it was not safe for her, realtors, or prospective buyers to attend the rental unit given the Tenant's behaviours so they served the Tenant with a 1 month notice to end tenancy and took the property off of the real estate market.

The 1 Month Notice was issued pursuant to Section 47(1) of the Act listing an effective date of January 31, 2017 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

The Landlord stated that since issuing the Notice the Tenant's behaviours have escalated to the point the police had to be called. She submitted the Tenant was upset and began throwing ice and snowballs at the plate glass windows of the printing shop.

The Tenant disputed the Notice to end tenancy and put a lot of emphasis on his submissions that he needed money before he would move. He argued the Landlord was talking about her version of events and then confirmed he had been upset for sure and had used foul language.

I heard the Tenant state that he had originally agreed to communicate directly with the realtor by email to arrange showings. He argued that he wanted money because it has been "a total hell" dealing with the realtor because they wanted to show the rental unit all the time. He stated he felt used and taken advantage of because of the following: the realtor had threatened to evict him if he did not keep the place clean; the realtor would keep cancelling showings; there were a team of realtors showing the place so he had many showing requests; and he was told he would have to move in two months if someone bought the place.

The last argument the Tenant put forth was that he was not sure who his landlord was. He asserted he was required to deal with the print shop occupant regarding utilities and the heat; the landlord and her mother; and the realtor. He stated he should not have to move because there was a housing crisis; unless the Landlord gave him money.

The parties were given the opportunity to try and settle these matters; however, they were too far apart and were not able to agree upon a settlement. Each party confirmed they were aware the Landlord had collected payment for January and February 2017 pending the outcome of this Decision and not as an intention to waive the 1 Month Notice.

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; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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 and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

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.

The parties need to be reminded that a landlord can choose to sell a rental property whenever they desire, even if the property is occupied by a tenant. The *Act,* section 29, provides a landlord and their agents the right to access the rental property upon 24 hours written notice. In this case the Tenant agreed to communicate directly with the realtor, via email, as the notice to schedule showings of the rental unit. A tenant cannot refuse the landlord or their agent entry or access to the rental unit after proper notice had been served.

In addition to the above, section 49 of the *Act* provides that if the property has been sold and the purchaser requests the landlord serve the tenant a 2 Month Notice for landlord's use of the property, a tenant would have to vacate the rental unit based on such a notice.

After consideration of the totality of the evidence before me, I do not find the realtor was threatening the Tenant. Rather, I find there was sufficient evidence to support the realtor was trying to inform the Tenant of section 49 of the *Act.* Furthermore, while I appreciate that numerous showings of a property can be somewhat disruptive, I find the Tenant's threatening behaviours towards the realtors who were showing the property and his threats towards the Landlord and her month have significantly interfered with and unreasonably disturbed the Landlords and their agents. So much so that the Landlords

felt they had to take the property off of the real estate market for the safety of others. As such, I find there was sufficient evidence to uphold the 1 Month Notice issued December 19, 2016. Accordingly, I dismiss the Tenant's application and uphold the Landlord's 1 Month Notice and their application.

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.

I then considered that the Tenant has paid to occupy the rental property for the full month of February 2017. Therefore, the Landlord has been issued an Order of Possession effective **February 28, 2017, after service upon the Tenant,** pursuant to section 55 of the *Act***.** 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 Landlords were successful with their application and were granted an Order of Possession. The Tenant's request to cancel the Notice was dismissed, without leave to reapply and his request for monetary compensation was dismissed, with leave to reapply.

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: February 20, 2017

Residential Tenancy Branch