



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, RR, LRE

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested the following relief:

- an Order canceling a 1 Month Notice to End Tenancy for Cause issued February 28, 2017;
- an Order that the Landlord make repairs to the rental unit;
- an Order that the Tenant be permitted to reduce her rent by the cost of repairs, services or facilities from the rent;
- an Order restricting the Landlord's right to enter the rental unit; and,
- to recover the filing fee.

The hearing was conducted by teleconference on March 27, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed that the rental unit is the lower unit of a three unit home in which the Landlord occupies the upper unit. For clarity, I amend the Tenant's Application for Dispute Resolution pursuant to section 64(3)(c) to clarify that the rental unit is the lower unit of the home.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim in the Tenant's Application relates to the Notice and the continuation of this tenancy; I further determine that this claim is not sufficiently related to the Tenant's other claims. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

I therefore exercise my discretion to dismiss the balance of the Tenant's claims with leave to reapply as appropriate and will address only the validity of the Notice and the Tenant's request to recover her filing fee.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee paid?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a Notice to End Tenancy, the Landlord must present their evidence first as the Landlord bears the burden of proving the grounds for ending the tenancy. Accordingly, the Landlord presented his evidence first.

The residential tenancy agreement was provided in evidence and provided that this 1 year fixed term tenancy began April 1, 2016 and was to continue on a month to month basis or further fixed term following the expiration of the term. Monthly rent was payable in the amount of \$1,050.00 on the 31st of the month.

The Landlord testified that the rental unit is located in the basement unit of a home in which he resides. He confirmed there are two units on the lower floor including the subject rental unit.

The reasons cited on the Notice are as follows:

- The Tenant is repeatedly late paying rent;
- The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- The Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The Landlord testified that the Tenant has paid rent on the 1st of the month, or later. He confirmed that he is not as troubled by the issue of the rent as she has also paid rent early on occasion.

The Landlord stated that the primary reason he wishes to end the tenancy is related to the Tenant's dog. He stated that the Tenant's dog has an extremely loud bark and howl and barks "constantly". He claimed that a couple times a week he receives complaints from the neighbours. He also stated that her dog is aggressive, has scratched several doors of vehicles on the property, and has scratched other dogs, including his friend's smaller dog. He also said that it has aggressively growled at other dogs, including the Landlord's dog.

The Landlord also testified that the neighbours are complaining about the Tenant's dog and have indicated that their lives are being significantly disrupted. He stated that her dog is routinely off leash (despite her agreement that it would remain on leash) runs through the neighbourhood and chases vehicles and wildlife. He further stated that the dog is very aggressive and this is concerning for the other downstairs' renter's 5 year old boy as the dog has pushed the boy. He also stated that the dog also defecates in the Landlord's yard and in the sandbox where the five year old boy plays as well as in all the neighbour's yards.

The Landlord stated that the issues with her dog started shortly after she moved in and have continued, although they have gotten "somewhat better".

The Landlord stated that when the Tenant first moved in, he spoke to the Tenant about her dog and confirmed that it was his expectation that the dog was not to be let out into the yard, and was to be in a smaller 20 foot by 20 foot area which is to the left of the rental unit and specific to the Tenant. He confirmed that this area is not fenced. He also stated that there is a large covered area for her to use as well. He testified that he informed her that he did not want the Tenant to have the dog off leash at any time and that the dog was not to be running loose in the neighbourhood or in the other parts of the yard.

The Landlord stated that S.P., the renter who lives the other lower rental unit, is moving out of the rental unit due to concerns he has with the Tenant and her dog. Introduced in evidence was a letter from S.P. dated February 24, 2017 which reads as follows:

"I am unfortunately giving you my month's notice to be out of your suite April 1st, 2017. I enjoyed living here but due to your other tenant down below [name of Tenant], I cannot enjoy my suite to the fullest. I've had her dog jump up onto the side of my vehicle twice, scratching it. It runs loose on the property most days as soon as you leave for work and can be confrontational (playing or not). I bring the garbage down and her dog gets aggressive with me, let alone if I were to be walking with my son. I find poop EVERYWHERE around the property which is beyond annoying. My son and I have stepped in it more times than I can count, and it is I our side of the yard WHEN I PAY RENT! She drives far too quickly up and down the driveways (around 50km) and has no recognition for others. Her dog most of the time runs out into the road as soon as I pass her suite and I drive less than 15 km, for just that reason. Also, her dog barks throughout the day, mostly right after you leave for work. And I have woken up hearing it in the late evening/early mornings. My son's bedroom window faces her suite and it can be very disruptive for his sleeping pattern as well".

The Landlord also provided a copy of a letter written by a neighbour, J.K., dated March 11, 2017 which reads as follows:

"A letter in conjunction to a tenant at the dwelling of [Landlord's name and address withheld] This tenant has been several times seen and caught driving at excessive speed on a 30 k/m road and I have experienced this and have been disappointed often. Having kids of my own that play on the street and having this happen is unacceptable behavior. The tenants dog continuously doing his business on my property and barking at all hours of the day and night. This dog also coming after my dog with inappropriate behavior is starting to be annoying. Loud music and inappropriate behavior is not accepted around this neighbourhood. Speeding down the street is going to result in someone getting hurt and my kids are nervous and scared to play on street. Never seen a tenant in this area with this type of behavior before. Please deal with this situation as this getting to be disrupted to the neighborhood."

The Landlord also noted that his communication with the Tenant is no longer workable. He stated that he has been willing to fix the door and the washing machine, but the Tenant is refusing him entry. Introduced in evidence was a note from the Landlord providing the Tenant 24 hours' notice to access the rental unit to repair the lock and the washing machine as well as to show the unit to prospective tenants. The Landlord also provided an invoice from a plumber dated February 1, 2017 wherein the plumber writes that he attended the rental unit on two occasions to repair the washing machine and was refused entry.

Also provided in evidence by the Landlord was a handwritten note from the Tenant which reads as follows:

"[Landlord name]

I am not feeling safe with you. I am refusing you entry as there is a dispute in process.

[Tenant's name]

03/06/17

8:30 p.m."

This note appears to have been placed over the Notice of Dispute Resolution Hearing letter provided by the Residential Tenancy Branch.

In reply to the Landlord's claims, the Tenant testified that she is not refusing the Landlord entry. She stated that she did not want him to show the rental unit to prospective tenants. The Tenant said that she has asked him to fix the door and the washing machine and he has refused to do so.

In reply to the Landlord's concerns about her dog, the Tenant said that she is home with the dog as she is self-employed. The Tenant said that after a couple of barks she pulls him in. She also stated that in regards of the allegation that her dog harmed another dog she stated that her dog "leaned down" and that she had no idea if her dog scratched another dog as she "did not receive a letter regarding this".

In terms of S.P.'s (the other renter) concerns, the Tenant stated that she is friends with S.P.'s wife, and is aware that they are getting a divorce and he only has his son once a week and can't afford the rental unit. She said that she does not believe that he is moving out because of her dog, but rather for financial reasons. The Tenant also stated that at no time did S.P say he had a problem with her dog.

The Tenant stated that her dog barks only as a result of the Landlord's dog's barks, who she claimed barks "all the time". She stated that her dog is not an aggressive dog and loves children.

The Tenant further testified that the other neighbours believe that her dog should be allowed to run around the neighbourhood and not be on leash. She also claimed that the "neighbour to the left" plays with her dog as he feels bad because the dog is tied up.

The Tenant then stated that she believes the Landlord is very confrontational as she claimed the Landlord told her four months ago that the neighbours want to slash her tires because of her dog.

The Tenant further stated the Landlord did not tell her that her dog had to be on leash when she moved in and that she moved there because the area is rural. She said that her dog is on leash 95% of the time, and sometimes he gets excited and takes a run around the yard. The Tenant stated that her dog is great with children and denied that her dog is aggressive.

The Tenant further denied that her dog jumped up and scratched vehicles and testified that. She said that "no one has ever said that her dog has scratched a car".

The Tenant also denied that she has ever seen her dog run around the neighbourhood and defecate on neighbour's yards. She said that she is always outside with the dog and he will only bark if he sees a deer. She also stated that she is fearful of the deer because they are the ones defecating on lawns and eating flowers.

The Tenant confirmed that the Landlord has sent her text messages as well as hand written notes about her dog barking.

The Tenant also stated that the Landlord sleeps until noon or 2:00 p.m. and this impacts her ability to pay her rent. The Tenant stated that she believes her rent is due the 1st of the month, not the day before. She also stated that the Landlord asks for cash to be put under a cushion on the front porch. She also stated that the Landlord will not allow her to have his email for online transfers.

In reply the Landlord stated that the Tenant's claim that she is not aware of the neighbour's concerns is simply false; he claimed that the neighbours have collected defecation from her dog and left it at her door as a not so subtle reminder to keep her dog off their lawns.

The Landlord also confirmed that the “tire slashing” comment was made in a moment of anger by another neighbour because the Tenant speeds through the neighbourhood endangering children and other pets and the other neighbours are very upset by this.

The Landlord said that the Tenant’s claim that the dog is on leash all the time is false. The Landlord confirmed that he works for the school district from 3:00 p.m. to 11:00 p.m. at night. The Landlord said that he is aware that as soon as he leaves she lets the dog off the leash. He said that not only did the other renter tell him this, but he has “tested it” by leaving for work and then coming back five minutes later only to see that the dog is off leash. Additionally, the Landlord said that he has personally witnessed the Tenant at midnight searching for her dog with flashlights.

In terms of the Tenant’s claims regarding paying rent, the Landlord also stated that he has requested post-dated cheques from the Tenant and he has also provided her with receipts for any cash payments.

In terms of the Tenant’s claim that S.P. is moving out because he can’t afford the rental, the Landlord stated that he agreed to reduce the rent as he wants S.P. to stay. He said that S.P. is leaving because of the concerns he has with the Tenant, not financial reasons.

Analysis

After consideration of the testimony and submissions of the parties, the evidence before me and on a balance of probabilities, I find as follows.

As noted during the hearing, the residential tenancy agreement provides that rent is payable on the 31st of the month; the agreement does clarify whether rent was to be paid on the 31st of the *preceding month*. As the agreement lacks sufficient clarity in this regard, I am unable to find that the Tenant has been repeatedly late paying rent.

I find that the Landlord has met the burden of proving that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

I accept the Landlord’s evidence that the Tenant’s dog has significantly disturbed the other renter, S.P., and that as a result, S.P. has given his notice to end his tenancy. The letter provided in evidence from S.P. confirms the testimony of the Landlord that S.P. was concerned about the Tenant’s dog’s constant barking, jumping up and scratching vehicles, running loose on the property, being confrontationally and aggressive, and defecating on the shared lawn.

I further accept the Landlord's evidence that others in the neighbourhood have expressed their concerns to the Landlord about the Tenant's dog's behaviour. The Tenant claimed that the neighbours believe her dog should not be on leash and should be permitted to run free in the neighbourhood. I do not accept her evidence in this regard. I prefer the Landlord's evidence as it is supported by the letter written by the neighbour J.K. and the letter written by S.P. Further, I accept the Landlord's evidence that one neighbour collected dog feces and left it in a bag at the Tenant's door as a "not so subtle reminder" that the Tenant's dog should not be permitted to defecate on neighbouring lawns; this is clearly in contrast to the Tenant's assertions that the neighbours believe her dog should be permitted more freedom.

I accept the Landlord's evidence that he informed the Tenant that her dog must remain on leash and that the dog was restricted to a smaller grassy area on the property as well as a covered deck.

There is no dispute that the Tenant is responsible for her dog's behaviour. I accept the Landlord's testimony that the Tenant's dog has been aggressive with other dogs and children, and has disturbed the Landlord and S.P. because of excessive barking. I also find that the effect of the Tenant's inability to manage her dog's behaviour has created a stressful environment for the Landlord as he is left to deal with the repeated complaints from his other renter and neighbours, and has resulted in S.P. giving his notice to end his tenancy.

I find the Landlord has proven that the Tenant has unreasonably disturbed another occupant of the rental home as well as the Landlord and I therefore uphold the Notice to End Tenancy.

As I have dismissed the Tenant's claim for an order canceling the Notice, I must, pursuant to section 55 of the *Residential Tenancy Act*, grant the Landlord an Order of Possession. This Order of Possession shall be effective two (2) days after service on the Tenant. The Landlord must serve the Tenant and may file and enforce the Order in the B.C. Supreme Court.

The Tenant, having been unsuccessful in her claim, is not entitled to recover the filing fee.

As the tenancy is ending, the only remaining claim on the Tenant's Application for Dispute Resolution which remains applicable is her claim for authority to reduce repairs

for services of facilities agreed upon but not provided (section 65(1) of the *Act*); she is at liberty to reapply for this relief on a retroactive basis.

Conclusion

The Tenant's claim for an Order canceling the Notice is dismissed. The Landlord is granted an Order of Possession effective two (2) days after service.

The Tenant's claim for an Order pursuant to section 65(1) of the Act is dismissed with leave to reapply.

The balance of the Tenant's claims, including her claim for recovery of the filing fee, is dismissed.

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: March 31, 2017

Residential Tenancy Branch