



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute a One Month Notice to End Tenancy for cause; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The landlord testified that they did not receive the tenant's application in her package sent to them but did receive it by email on March 15, 2017. The parties were given the opportunity to adjourn the hearing to allow for proper service of the tenant's application. The parties declined this offer and wanted to proceed with the hearing today.

The tenant testified that the landlord served their evidence to her by putting it under her door. Section 88(g) of the *Act* stipulates all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person may be given or served by attaching a copy to a door **or other conspicuous place at the address at which the person resides** or, if the person is a

landlord, at the address at which the person carries on business as a landlord [my emphasis added by bold text].

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*.

Notwithstanding the tenant's submission that service by sliding evidence under a door is not valid based on the *Act*, I find, pursuant to section 62(2) of the *Act*, the landlords' evidence was served in accordance with section 88(g) of the *Act*. I make this finding in part as the floor inside the tenant's rental unit can be considered a conspicuous place at the address at which the person resides. Furthermore, it was undisputed that the tenant received the evidence after it was slid under his door.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will not deal with the tenant's application for an Order for the landlords to comply with the *Act*, regulations or tenancy agreement at this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2014 for a fixed term tenancy of a year, thereafter continuing as a month to month tenancy. Rent for this unit is currently \$1,263.33 a month due on the 1st of each month in advance.

The landlord KM testified that the tenant was served with a One Month Notice to End Tenancy for cause (the Notice) in person on February 22, 2017. The Notice has an effective date of March 31, 2017 and provided the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) Put the landlord's property at significant risk;*

KM testified that the tenant has a dog who barks and growls and sounds like it is coming through the door when anyone is outside the tenant's door. This can be heard by any occupants of the building as they walk by. KM referred to her digital evidence of a video showing the noise made by the dog when they were serving their evidence under the tenant's door. KC has sent the tenants emails about the dog and whenever the landlords or realtors have to enter the unit the tenant has to kennel her dog.

KM testified that they are currently trying to sell their condo and the tenant is unwilling to let realtors in to show the condo. KM referred to emails in their evidence showing the tenant has raised issues she is having with the landlord KC to realtors.

KM testified that the tenant has left notes in the building claiming that the landlords are the building managers when in fact they are just the owners of the tenant's unit. The tenant has provided the landlords' cell phone numbers in these notes and other tenants have called the landlords, often late at night, complaining about issues in the building.

KM testified that the tenant has provided the landlords' personal emails to another resident in the building and that resident has written a defamatory email to the landlords. KM testified that the tenant should not be handing out details concerning the landlords and this was significantly disturbed the landlords. Further to this the tenant has also slandered the landlords to another tenant in the building who is a plumber and who informed the landlords that the tenant had slandered them.

KM testified that the landlords both work for Remax; however, the tenant's unit is owned by the landlords and operated separately from their work. The tenant is aware of this as the lease is in the landlords' names and not that of Remax. The tenant has emailed the Vice President of

Remax and the managing broker and slandered the landlords' names to them. This has threatened the landlords' livelihood. The rental unit was never advertised on the Remax site and this tenancy has nothing to do with the landlords' work place. KM referred to emails sent by the landlords Vice President and managing broker.

KC testified that the landlords sit on the Strata Council. KC is the President of the Strata and KM is the Vice President. The tenant's actions in leaving notes around the building and making complaints about the landlords have seriously jeopardized the landlords' efforts and ability to carry out their roles in the Strata. They get late night phone calls and are harassed by other residents. They have now decided to step down from the Strata Council because they cannot change their phone number as they need their number for work. The tenant's actions have made it difficult for the landlords to maintain good relationships with other owners and residents and it has undermined the landlords.

KC testified that on one occasion the tenant told everyone that the landlords had changed her rent. The tenant's lease information is between the landlords and the tenant and by the tenant giving out this sort of information the landlords have found it difficult to continue to own this property and be on the Strata Council.

KC testified that the tenant has prevented the landlords their lawful right to sit on the Strata as President and Vice President due to the information she provides about the landlords to other residents. If the tenant has shared her lease agreement with others then this is a security risk for the landlords as it contains their names, numbers and home address. The tenant is not able to carry on a civil conversation with the landlords, and refuses to return calls to the landlord. The tenant claims she is not at home when her lights are on and clearly she is home. The landlords decided to list the unit for sale due to the tenants behaviour and because the tenant has jeopardized the landlords' careers and safety.

KM testified that the tenant has jeopardized the health, safety and lawful right of the landlords as their realtor or others cannot enter the tenant's unit unless her dog is kennelled. This prevents the landlords from doing maintenance in the tenant's unit without her prior agreement to kennel her dog.

KM testified that the tenant has put the landlords' property at significant risk over an issue with the hotwater tank. The tenant complained she was not getting enough hotwater. Last April the tenant allowed the landlords to go in and look at the maintenance issues in her unit and the landlords ran the hotwater for 20 minutes and found there were no issues with hotwater. KC referred to an email received from the tenant's handyman who checked the heat setting on the hotwater tank and he does not state that it needs to be replaced. The landlord sent in their maintenance man on September 09, 2016; he drained the hotwater tank and refilled it and informed the landlords that it looked good. In February, 2017 the landlord sent in another plumber and from his notes he has said it appears that the setting on the hotwater tank had been turned down. If the tenant's handyman had turned this setting down this could have put the landlords' property at significant risk if anything was done to the hotwater tank that may have caused a leak.

The landlords seek an Order of Possession for the end of April, 2017 if the tenant's application is unsuccessful.

The tenant testified that with the regard to the landlords' evidence concerning her dog barking; the tenant testified that there have never been any complaints about her dog barking from neighbours and the only reason her dog was barking was because the landlord or someone was running a vacuum outside the tenant's door while they were shoving papers under the door. The emails from the landlord came last week while he was waiting outside the tenant's door for two hours saying that he would enter her unit if the dog was barking. The tenant testified that the landlords' realtor has also stated that he does not have a problem with the dog because the tenant kennels it when he comes to show the unit.

The tenant testified that KC has stated that she is unreasonable with the landlords' realtors and that she will be evicted if she does not cooperate with this realtor. The tenant testified that she has just asked for Notice of Entry to be provided by the landlords' realtor in accordance with the *Act* before viewings take place.

The tenant testified that she has had complaints about KC and his company and there is a conflict of interest. The landlords are licenced real estate brokers. The tenant has taken her complaints to the real estate council and they asked the tenant to contact the landlords' broker.

The tenant testified that she was interviewed by a man from the real estate council. The tenant then wrote to the landlords' broker. The tenant testified that KC says he is the Strata President and had to step down but the tenant believes he was asked to step down.

The tenant testified that in KC's emails he has said the tenant has slandered him to a painter in the building. The painter was hired by the Strata Council and the landlords have no proof that the tenant has slandered them. With the regard to the landlords saying the tenant had approached another tenant in unit 101 to fix her plumbing, the tenant testified that she did not do this. It was a casual conversation with this other tenant when the tenant asked him if he fixed hotwater tanks and what it would cost.

The tenant disputed that she put up notes around the building saying to contact the landlords. The tenant testified that other tenants had approaching her about Strata complaints because they knew KC was her landlord and was on the Strata Council. The tenant refused to contact the landlords so simply directed other tenants to contact them by the landlords' numbers. The tenant testified that the landlords have no proof to show that other residents have contacted the landlords late at night.

The tenant testified that she has had problems with her hotwater tank. The landlords have been given time to repair it and have entered her unit without notice to do repairs. The landlord said the hotwater tank was fine yet the invoice from the plumber in September when the tank was drained shows him fixing things that the tenant had requested in May. The tenant disputed that the handyman she had out to look at the problem with the toilet is a friend of hers. He did look at the tank but did not do anything to it. The tenant testified that KC is accusing the tenants of having this person turn down the temperature of the hotwater so she could complain about it, but this untrue.

The tenant testified that she has not slandered the landlords to other tenants. The tenant agreed that she has spoken to her neighbours, as she is allowed to do, after the landlords sent an email trying to raise the tenant's rent by seven percent. It was a neighbour that told the tenant the landlords cannot do this. Any emails received from other tenants to the landlords have nothing to do with the tenant and the tenant denies giving out the landlords' personally email. The tenant testified that the landlords' personal email is shown on their website.

The tenant testified that she has not put the landlords' property at significant risk and the landlords have no proof for any of the reasons shown on their Notice. The tenant testified that she is allowed to contact their employer as they are licenced property managers. The landlords hand out their business cards with their own cell phone numbers on it so other residents are able to call them and the tenant is not at fault if this happens. The tenant believes that the landlords are trying to evict the tenant using a One Month Notice as she received the Notice two days before they put the unit on the market. The tenant believes this is to avoid paying her one month's rent and giving her a Two Month Notice.

KC testified that their personal email is not on their website only their business email is noted on that site. Other tenants had told the landlords that it was this tenant who gave them his details. KC testified that they are not Strata managers for the building and are only this tenant's landlord because they own this unit and the tenant should treat them as such. The tenant has circumnavigated the complaint process through the *Act* and wrote to the landlords' employer which is inappropriate. She even emailed the executive Vice President of Remax for Western Canada. This is also not appropriate. KC testified that they have had a previous hearing [file number documented on the front page of this decision] and in that decision the Arbitrator documented that the tenant is making things difficult. KC testified that the tenant's comment that they are trying to avoid giving her a Two Month Notice to End Tenancy and a free month's rent is untrue. The landlords only decided to sell this unit because of the tenant's actions and if she moves out then they will likely not sell the unit. KC testified that at the next general Strata Council meeting they will both be resigning their positions and have not been asked to give these positions up.

Analysis

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

It is clear that the parties have a longstanding history of concerns and a hostile relationship. The parties have had several hearings concerning issues that have arisen during this tenancy. This hearing; however, is based on the Notice to End Tenancy for cause and the reasons provided on that Notice only.

Where a Notice to End Tenancy comes under dispute, the landlords have the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlords need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the landlords have the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

With this in mind I have considered the evidence before me I find there is insufficient evidence to show that the tenant's actions have caused any issues that may put the landlords' property at significant risk.

Having considered the other two reasons given on the Notice; I am not satisfied that the landlords evidence, standing alone, shows that the tenant's dog has disturbed other occupants or the landlords or that it poses any kind of threat to people entering the unit such as the landlords, contractors or the landlords' realtor, because the tenant kennels the dog when she is given notice of entry. The video provided by the landlords does indicate that the dog is barking but there is also some other noise such as someone vacuuming outside the unit and shows the landlord putting papers under the tenants door which may have caused the dog to start barking at that time. There are no documented complaints from other residents about the tenant's dog, therefore the landlords fail to satisfy the burden of proof in this matter.

I am satisfied that the landlords have sufficient evidence to show that the tenant has overstepped the landlord/tenant relationship by involving other parties that are not subject to the tenancy agreement into the private business of the landlords and tenant. While a tenant is at liberty to speak candidly to friends these conversation must not be libelous in their nature or have any adverse effect on a landlord. In the circumstances before me, I find the version of events provided by the landlords to be highly probable given the conditions that existed at the time and the level of animosity between the parties. Considered in its totality, I favor the oral evidence of the landlords.

I find the landlords' evidence concerning the tenant voicing her concerns and complaints to other tenants to be significantly detrimental to the landlords' ability to sit on the Strata Council as President and Vice President as it undermines any decisions that they may make regarding the Council and the work of the Strata for all residents and owners of the building including the landlords.

I further find the tenant has recourse under the *Act* for remedy to any concerns and complaints she has about the landlords non-compliance with the *Act*; instead the tenant choose to circumnavigate the *Act* and go directly to the landlords' employers, simply because they are licenced property brokers, and to make complaints about the landlords. This rental unit has no connection to the landlords' company and is a private property and a private arrangement between the tenant and landlords. I find in doing so the tenant has seriously interfered with the landlords' right to conduct their business as landlords outside of their working role and has had the potential of jeopardizing the landlords' work and careers with their employers. Any issue the tenant has with this tenancy has no bearing on the landlords' business or role as property managers for Remax because this is a private tenancy and not one that is subject to any rules or regulations set through their company.

The tenant argued that she went to the Real Estate Council with her concerns and that they interviewed her and told her to contact the landlords' managing broker. As I have stated above the tenant's recourse was to take her concerns to the Residential Tenancy Branch and for the matter to be dealt with under the *Act* and not by involving a third party because this tenancy was not part of the landlords' companies' rentals.

I find therefore these reasons given on the Notice are sufficient reason to end this tenancy for cause.

The tenant's application is therefore dismissed without leave to reapply.

. 55(1) of the *Act* provides that:

55 (1) *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 find the landlords' Notice to End Tenancy does comply with s. 52 of the *Act* and the landlord requested that I uphold the Notice and issue an Order of Possession for the rental unit. The effective date of the 10 Day Notice is March 31, 2017; and the landlords have requested an Order of Possession effective on April 30, 2017. As I have dismissed the tenant's application I therefore issue an Order of Possession to the landlords.

Conclusion

The tenant's application is dismissed without leave to re-apply.

The landlords have been issued an Order of Possession effective **at 1.00 p.m. on April 30, 2017** pursuant to s. 55(1)(b) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlords then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: April 06, 2017

Residential Tenancy Branch