Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing was convened to deal with cross-applications under the *Residential Tenancy Act* (the "Act"). The tenants applied for an order cancelling a 1 Month Notice to End Tenancy for Cause dated August 7, 2017 (the "1 Month Notice"), and for monetary compensation, an order allowing them to change the locks, and recovery of the application filing fee.

The landlord applied for an order of possession based on the 1 Month Notice, compensation for damage to the property, monetary loss, and unpaid rent or utilities or deposits. The landlord also applied for authorization to retain a deposit and recovery of the filing fee.

One of the tenants attended the hearing with her mother as support. The landlord attended with her realtor available as a witness. Both parties were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to respond to the submissions of the other party.

Service of the tenants' application and amended application was acknowledged by the landlord.

The tenant stated that she had not received the landlord's application or her amendment. The landlord testified that these materials were sent to the tenants by registered mail and receipts in support of this were included in evidence. Based on the landlord's testimony and her documentary evidence I accept that the tenants were served with the landlord's application and amendment.

The Act allows me to award a landlord an order of possession where a tenant's application to cancel a notice to end tenancy is unsuccessful, regardless of whether a landlord has applied for such an order. As set out below, this hearing was limited to the

question of whether this tenancy must end. It therefore does not practically matter whether the tenants have received the landlord's application in in any event.

Both of the parties filed a substantial amount of evidence in several installments and without pages numbers as required by the Rules of Procedure.

The tenants said that she had not received one of the landlord's evidence packages consisting of 64 pages. The landlord testified that she sent this evidence by registered mail and receipts were included in support showing that the package was mailed separately to each of the tenants on August 21, 2017. The landlord stated that she registered mail was returned unclaimed. Section 90 of the Act provides that materials sent by registered mail are deemed to have been served five days after mailing, and I deem the tenants to have been served with this evidence package. I note that the majority of this evidence was reproduced in the tenants' own evidence package in any event.

Preliminary issue

At the outset of the hearing I advised the parties that I would be severing their applications with respect to the 1 Month Notice from their other applications. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. Here, both parties seek monetary compensation and other orders which not so related to the question of whether or not the tenancy will continue to require determination during these proceedings. Accordingly, I dismiss the balance of both parties' applications, with leave to re-apply.

I have reviewed and considered all evidence and testimony before me, but refer to only the relevant facts and issues in this decision.

<u>Issue(s) to be Decided</u>

Are the tenants entitled to cancellation of the 1 Month Notice?

If not, is the landlord entitled to an order of possession?

Is either party entitled to recover application filing fee?

Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began on July 1, 2016 and is currently a month to month tenancy. Rent of $1,500.00 is due on the first of the month. A security deposit of $787.50 was transferred to the current landlord when she bought the rental property, and remains in her possession.

The landlord served the tenants with the 1 Month Notice on August 7, 2017. A Proof of Service document signed by a third party witness attesting to this was in evidence. The tenants applied to dispute the 1 Month Notice on August 17, 2017.

The 1 Month Notice alleges that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk. It also alleges that the tenants have engaged in illegal activity that has or is likely to damage the landlord's property or jeopardized a lawful right or interest of the landlord. It further alleges that the tenants have breached a material term of the tenancy agreement and failed to correct that breach within a reasonable time after written notice of same, knowingly given false information to a prospective purchaser, and failed to pay a pet deposit within 30 days as required by the tenancy agreement.

The landlord testified that after she delivered a letter in late July advising the tenants of her intention to sell the home, she and one of the tenants had an argument over the phone, and the tenant told the landlord that she was going to come over and punch her. The landlord said that she is afraid of the tenants because they have acted unreasonably and that she has changed her address as a result. Her realtor was available to testify to the fact that the landlord was afraid. The landlord further said that she has filed a police report and she included in her evidence proof that she has requested a copy of the report. She says the tenants have called her a "lonely old grandma, living alone" and she now keeps a chair propped against her door as a cautionary measure.

The landlord also said that after she wrote the tenants on August 16 regarding their concerns about the home and their quiet enjoyment, the male tenant responded with a text reading: “Go fuck yourself cow.”

The tenant in response agreed that she and the landlord had a conversation on the phone but denied having threatened her physically. She noted there is no evidence that she did so. She also said that the male tenant does not text.

The landlord also alleged that one of the tenants told a prospective purchaser of the property that there was mold in a particular wall. The landlord submitted a portion of a professional home inspection report dated September 12, 2017 indicating that there was not mold in that wall. She also submitted emails between herself and her realtor about the tenant’s comment on the mold to the prospective purchaser, in which the writers characterize the alleged mold as marks on the wall caused by furniture. The landlord also said that the tenants had indicated that they were interested in buying the home initially and that they had lived in the home for approximately two years before this landlord bought it, and mold had never been raised as an issue before.

The tenants’ evidence includes correspondence from December, 2016 in which the tenant raises her concern about mold in the wall. The tenant said at the hearing that there does appear to be mold in the wall and that she and her co-tenant are in the construction business and aware of what needs to be done to address this. She pointed out reasons why the inspector’s moisture readings in the September report might have been incorrect and said that he did not inspect the wall thoroughly.

Another email from the realtor to the landlord describes a showing on August 16 during which the tenant told her in front of the prospective purchaser that she would not be moving anywhere and that an addiction rehab centre and shelter would be opening in the neighbourhood. The landlord’s evidence includes notices about the proposed relocation of a shelter, with notes indicating that this is not a rehab centre and that it is not particularly close to the home at issue.

The landlord also alleged that the tenants were generally uncooperative with her attempts to sell the rental property. She said that they repeatedly delayed or refused showings although they had been given 24 hours’ notice of them. The landlord described one interaction in particular on August 6 when an agent attended at the rental property to leave a notice that the property would be shown the following day, and the tenants refused to leave their porch and accept the notice personally, instead

maintaining that if the agent posted it, they would be deemed to have received it three days later, and the showing could therefore be on August 9. A letter dated August 8 from the landlord's agent describing this was included in evidence.

The landlord also said that she has taken the home off the market while the tenants are occupying it because she doesn't feel she can sell it with them in it and the market is over for the season.

The tenant in response said that the tenants cooperated to allow showings, even though they had a holiday planned for the week that showings were requested and were required to bring their dogs with them because of the showings, which made their holiday difficult.

Regarding the August 6 incident, the tenant said that she was ill and just home from holiday, and ended up allowing the August 7 showing in any event.

The tenants allege that the number and frequency of showings and open houses affected their right to quiet enjoyment.

The landlord's evidence also includes an email from her realtor indicating that when the landlord purchased the property the tenants had one dog. The tenants now have two dogs. They have not paid a pet deposit and there is correspondence in the landlord's evidence regarding her attempts to have them pay this in advance of a sale. The tenants' evidence includes correspondence in which the landlord approves their having another dog and does ask for a deposit.

There is also evidence around the landlord's attempts to conduct a condition inspection report and the tenants 'response that it is too late for this.

The tenants accuse the landlord of harassing and blackmailing them. The tenant who attended the hearing said that she has recently filed her own police report against the landlord for harassment, and that the landlord in response called her a "balding skank." A copy of this text message was in evidence. The tenant also says that the landlord's conduct has caused her to have anxiety attacks.

Analysis

Section 47 of the Act allows a landlord to end a month to month tenancy for cause by giving notice effective on a date not earlier than 1 month after the date the tenant

receives the notice, and the day before the day in the month that rent is payable. Because rent was payable on the first of the month, the correct effective date of the 1 Month Notice under consideration here is September 30, 2017.

Once a tenant applies to cancel a notice to end tenancy, the burden is on the landlord to establish cause for ending the tenancy on a balance of probabilities.

Although the tenant denied threatening the landlord, I find on a balance of probabilities that she did threaten to punch her. The relationship between the landlord and the tenants is acrimonious, and the threat alleged by the landlord is consistent with this. I also find that the male tenant has sworn at the landlord, and that the landlord has sworn at the tenants. The landlord has insulted the tenants as well. Unfortunately for the tenants, the landlord's conduct is not relevant to whether the tenants have given the landlord cause to end the tenancy. A physical threat is usually sufficient to warrant ending a tenancy. By swearing at and threatening the landlord, I find that the tenants have unreasonably disturbed the landlord.

I also find that the tenants have knowingly given false information to a prospective purchaser. At the hearing the tenant maintained that there is mold in the wall. At the time that she told the prospective purchaser about the alleged mold, the home inspection had not been performed, and the tenant had more reason to believe the marks were mold. I cannot conclude that she "knowingly" gave false information about the mold then.

However, I do find that by telling the realtor in the presence of a prospective purchaser that there was going to be an addiction rehabilitation centre in the neighbourhood, when the notice only suggests there might be a shelter (the notice invites public consultation), the tenant knowingly gave false information. Additionally, I find that she gave knowingly false information to the prospective purchaser when she stated in his presence that she would not be moving.

The information that the tenant shared with the prospective purchaser also threatened the potential sale of the rental property, and the landlord has a lawful right to sell her property. I therefore find that the tenant also jeopardized a lawful right of the landlords.

Because I have concluded that the landlord has established cause to end this tenancy these grounds, I do not have to consider the other grounds alleged.

The tenants' application to cancel the 1 Month Notice is therefore dismissed, and the 1 Month Notice is upheld. This tenancy will end at **1:00 pm on September 30, 2017**, the corrected effective date of the 1 Month Notice.

Section 55 of the Act requires that I grant an order of possession where a tenant's application to cancel a notice to end tenancy is dismissed or the landlord's notice is upheld, provided the notice complies with s. 52. I find that the 1 Month Notice complies with s. 52. Accordingly, I grant the landlord an order of possession for the above date.

Conclusion

The tenants' application for an order cancelling the 1 Month Notice is dismissed.

The balance of both parties' applications and their amended applications are dismissed, with leave to reapply.

I grant an order of possession to the landlord effective **at 1:00 pm on September 30, 2017**. Should the tenants or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Coluffymbia.

Unfortunately, a tenancy that was amicable for the majority of the time has deteriorated. Because both parties bear some responsibility for this, I will not award either party the application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 22, 2017

Residential Tenancy Branch