Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, O

Introduction

The Tenant filed an Application for Dispute Resolution in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for a monetary Order for money owed or compensation for damage or loss, and for "other".

This matter was the subject of a dispute resolution hearing on May 10, 2017. At the conclusion of that hearing the Arbitrator granted the Landlord an Order of Possession.

The Tenant sought a judicial review of that decision and on June 02, 2017 the Supreme Court of British Columbia remitted the matter back to the Residential Tenancy Branch to be reheard.

The hearing on January 17, 2018 was convened to consider the merits of the Tenant's Application for Dispute Resolution.

The Tenant stated that on April 05, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to an Agent for the Landlord. Legal Counsel for the Landlord acknowledged receipt of these documents.

Preliminary Matter #1

At the outset of the hearing two parties unrelated to these proceedings and a Residential Tenancy Branch Arbitrator dialed into the teleconference. It was subsequently determined that two matters had been inadvertently scheduled to be heard using the same teleconference passcodes. That matter was easily resolved and the Residential Tenancy Branch Arbitrator and the two parties unrelated to these proceedings exited the teleconference.

Preliminary Matter #2

At the outset of the hearing the Tenant was asked if there was anyone in the room with her and she replied that there was. When that party was asked to identify themselves the Tenant stated that the party was in the washroom and was not present to identify themselves.

I neglected to obtain the identity of this third party and I do not know if this party was in the room with the Tenant at any point during the teleconference.

Preliminary Matter #3

Rule 6.10 of the Residential Tenancy Branch Rules of Procedure stipulates that it is not permissible to disrupt the hearing and it authorizes me to "give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately". It further authorizes me to exclude a party from the hearing if they do not comply with my directions regarding their behavior.

From the outset of the hearing the Tenant was disruptive and spoke out of turn. She was advised of the importance of not interrupting others and was assured that she would be given an opportunity to address issues at the appropriate time.

She was advised that she would be placed in "mute mode" if she continued to interrupt. "Mute mode" permits a party to hear the proceedings but prevents other teleconference participants from hearing that party when she speaks.

The Tenant was placed in "mute mode" on several occasions during this hearing. On each occasion she was removed from "mute mode" after I and the other party had finished addressing a particular issue, and was always given the opportunity to address that issue.

Preliminary Matter #4

At the outset of the hearing the Tenant objected to the Agent for the Landlord with the initials "H.K." to participating in the hearing. She objected to his presence because she believes he was untruthful in a previous proceeding.

Rule 6.7 of the Residential Tenancy Branch Rules of Procedure stipulates that a party may be represented an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

The Tenant was advised that this individual has the right to participate in the hearing because he is acting on behalf of the Respondent. The Tenant was placed in "mute mode" after she refused to accept my decision to allow this individual to participate in the hearing and she remained in "mute mode" until we had moved onto another matter.

Service of Evidence

The Tenant submitted evidence to the Residential Tenancy Branch on April 28, 2017, May 09, 2017, and May 02, 2017. When she was asked when this evidence was served to the Landlord she attempted to discuss issues unrelated to service of evidence. To expedite matters Legal Counsel for the Landlord stated that the Landlord does not dispute service of evidence and the parties were advised that the Tenant's evidence is being accepted as evidence for these proceedings.

Legal Counsel for the Landlord noted that some of the evidence received from the Tenant was not received two weeks prior to the hearing on May 10, 2017. Given that the Landlord has had ample time to consider the evidence served to him prior to the hearing on May 10, 2017, I find it entirely reasonable to accept all of the Tenant's evidence even if it was not received by the Landlord two weeks prior to the hearing on May 10, 2017.

On May 01, 2017 the Landlord submitted a large binder of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was left at the Tenant's door on April 30, 2017.

On May 04, 2017 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was posted on the Tenant's door on May 04, 2017 or May 05, 2017.

On December 21, 2017 the Landlord submitted 61 pages of evidence to the Residential Tenancy Branch. On December 29, 2017 the Landlord submitted 107 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was personally served to the Tenant on December 29, 2017.

The Tenant repeatedly interrupted Legal Counsel for the Landlord when he was addressing service of the Landlord's evidence and she refused to comply with my directions to remain silent. She was therefore placed in "mute mode" while Legal Counsel for the Landlord outlined service of the Landlord's evidence. After the Tenant was placed in "mute mode" she was advised that once the Landlord has finished addressing service issues she will be permitted to respond to that issue and she was encouraged to take notes to ensure she is prepared to respond to the Landlord's evidence.

The Tenant was subsequently taken off "mute mode", at which time she acknowledged receipt of all of the Landlord's evidence. As the Tenant acknowledged receipt of this evidence it was accepted as evidence for these proceedings.

All of the evidence submitted by the parties has been reviewed, however given the sheer volume of the information it has not all been referenced in this decision.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?
Is the Tenant entitled to a monetary Order?

Background and Evidence

The Tenant applied for a monetary Order, in the amount of $16,498.00, which includes:

- $2,700.00 for loss of quiet enjoyment for the period between October of 2015 and April of 2016;
- $6,750.00 for loss of quiet enjoyment for the period between May of 2016 and December of 2016 and March of 2017;
- $5,000.00 for aggravated damages related to the Landlord "allowing tenant 201 to harass/verbally assault";
- $1,010.00 for loss of quiet enjoyment relating to the March 31, 2016 "eviction"; and
- $1,038.00 for loss of quiet enjoyment relating to the March 28, 2017 eviction notice.

The parties were advised that I was aware there had been a hearing on December 08, 2017 and that the Tenant had been awarded $150.00 in compensation in a decision dated December 19, 2017. The parties were advised that I was concerned that the Tenant's claim for compensation for loss of quiet enjoyment of the rental unit and

aggravated damages had already been decided and that I may not, therefore, have jurisdiction to consider the Tenant's application for a monetary Order.

Before I was finished explaining my concerns regarding res judicata, the Tenant argued that the $150.00 compensation was only related to the issues discussed at the last hearing. The Tenant was again placed in "mute mode" to provide me with the opportunity to explain my concerns regarding res judicata.

Legal Counsel for the Landlord stated that the Landlord takes no position on the issue of res judicata.

The Tenant was unable to make a submission regarding the issue of res judicata as she indicated that she did not believe she was being heard and she exited the teleconference prior to being given the opportunity to address the issue of res judicata, with the exception of her expressing her belief that compensation was only related to the issues discussed at the last hearing.

Legal Counsel for the Landlord stated that the One Month Notice to End Tenancy that is the subject of these proceedings was posted on the Tenant's door on March 28, 2017. He stated that the Notice declared that the Tenant must vacate the rental unit by May 31, 2017. A copy of this Notice, dated March 27, 2017, was submitted in evidence.

The One Month Notice to End Tenancy, dated March 27, 2017, declared that the Landlord is ending the tenancy because 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 has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

Legal counsel stated that the Landlord did not serve this One Month Notice to End Tenancy because the Tenant has engaged in illegal behaviour. He stated that the Notice to End Tenancy was served because the Landlord believes the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Tenant was unable to respond to any issues regarding the One Month Notice to End Tenancy during the hearing as she had exited the teleconference by the time these matters were discussed. The Tenant has submitted an abundance of letters and written submissions, which I have considered during this adjudication.

In the Tenant's written submission the Tenant argues that this One Month Notice to End Tenancy is not enforceable because it did not provide her with sufficient details of the reasons for ending the tenancy. She acknowledges that there are areas checked off on the Notice to End Tenancy, dated March 27, 2017, which provide a general description of the reasons to end the tenancy. She submits that this is insufficient detail and specifically notes that the area in which the Landlord is expected to provide details of the cause is blank on this Notice to End Tenancy.

There is an area on page two of the One Month Notice to End Tenancy, labelled DETAILS OF CAUSE. There are instructions in this area to "Include any dates, times, people or other information that says who, what, where and when caused the issue". The instructions further declare that the "RTB may cancel the notice if details are not described".

Both parties submitted a second One Month Notice to End Tenancy for Cause. This Notice to End Tenancy is similar to the One Month Notice to End Tenancy, dated March 27, 2017, in that it declares the Tenant must vacate by May 31, 2017 and it provides the same general reasons for ending the tenancy.

The second One Month Notice to End Tenancy for Cause is different than the One Month Notice to End Tenancy, dated March 27, 2017, in that it is undated and in the Details of Cause section of the Notice the Tenant is referred to Schedule A, which was attached to the Notice.

The Landlord contends that on April 07, 2017 this second One Month Notice to End Tenancy for Cause and Schedule A, which outlines the reasons for serving the Notice to End Tenancy, was placed in the Tenant's mail box.

The Tenant submitted a letter, dated April 10, 2017, in which she informed the Landlord that she received the Notice to End Tenancy that was slid under her door on April 07, 2017. In this letter she declares that the Landlord is not telling the truth in the "Schedule A letter".

In the Tenant's written submission she declared that the second One Month Notice to End Tenancy for Cause was not valid as it was undated.

At the hearing the Landlord outlined the various reasons the Landlord is attempting to end this tenancy. These reasons have not been summarized in this decision, in large part, because they are not relevant to my final decision.

At the hearing the Witness for the Landlord, who is the occupant of unit 203, described various ways in which she has been disturbed by the Tenant. Her evidence has not been summarized in this decision, in large part, because it is not relevant to my final decision.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure stipulate that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. Although the Tenant attended the hearing she opted to exit the teleconference because she did not feel she was being given the opportunity to be heard. As the Tenant exited the teleconference on her own volition, I found it appropriate to continue the hearing in her absence.

I do not concur with the Tenant's position that she was not being heard. In order to protect the Landlord's right to be heard the Tenant was, on occasion, placed in "mute mode" to provide other participants with the opportunity to speak. The Tenant was provided with the opportunity to respond to issues discussed once she was removed from "mute mode". Although cumbersome, I determined that proceeding with the hearing in this manner was the most effective method of ensuring that both parties were given the right to be heard.

Res judicata is a rule in law which stipulates that a final decision that is based on the merits of a particular claim, when made by a person of proper authority, cannot be considered at a subsequent hearing. The essential criteria in determining whether the principle of res judicata applies are:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision (or their privies) are the same in both the proceedings.

After reading the decision of December 19, 2017, I am satisfied that the Arbitrator rendering that decision considered the circumstances leading to the service of multiple Notices to End Tenancy when he concluded that she was entitled to compensation of $150.00. In reaching this conclusion I was influenced by the following paragraphs from the Arbitrator's decision (emphasis added):

I accept the parties' evidence that there has been continuing conflict in the rental building since September, 2015 when the other resident moved into the building. I accept the tenant's evidence that the tenant's right to quiet enjoyment of the rental unit has been interfered with by the other tenants' aggressive behavior and ongoing disputes. I find that the landlords were aware of the issue. I find there is little evidence of the steps the landlord has taken to attempt to resolve the conflicts among the tenants. I accept the evidence that the problems are ongoing.

I find that there is insufficient evidence that the landlord has taken reasonable steps to address the ongoing issue. **While there is undisputed evidence that the landlord has issued 1 Month Notices against the tenant, I find there is insufficient evidence that the landlord took any other steps in response to the conflict between the parties. It is not reasonable to repeatedly issue Notices against a single tenant when there is an ongoing conflict between multiple parties**. There is insufficient evidence that the landlord took steps to investigate the complaints by the parties. Even if the tenant is ultimately found to be the author of her own discomfort by engaging or exacerbating the conflict, it is unreasonable to reach that conclusion without first taking steps to investigate the complaints. Under the circumstances I find that there was an ongoing disturbance suffered by the tenant. The cause of the disturbance was an ongoing dispute between the tenant **and other residents**.

I find that the landlord was aware that there was conflict between several of the residents of the rental building. I find that there is insufficient evidence to show that the **landlord** took reasonable steps in response to the written complaints of the tenants to deal with this conflict.

I find that the tenant suffered loss of quiet enjoyment as a result of the landlord's choice to repeatedly make the same application through the Residential Tenancy Branch rather than take other actions. However, I am not satisfied that the tenant has provided sufficient evidence to justify the full amount requested. The tenant claims the amount of $1,038.00, the equivalent of one month's rent, for her loss.

The tenant seeks aggravated damages for the stress, anxiety and health issues caused by the landlords. I find that under the circumstances there is insufficient evidence to support an order for aggravated damages. The tenant has been issued a monetary award for the loss of quiet enjoyment above. I find that there is insufficient evidence to find that the landlord's actions and behavior was to such a level that the tenant is entitled to aggravated damages above the award already issued. Consequently, I dismiss this portion of the tenant's claim.

In my view, the Arbitrator's conclusion that this was a continuing conflict since September of 2015; that it was "not reasonable to repeatedly issue Notices against a

single tenant when there is an ongoing conflict between multiple parties"; and that "the tenant suffered loss of quiet enjoyment as a result of the landlord's choice to repeatedly make the same application through the Residential Tenancy Branch rather than take other actions" is sufficient to satisfy me that he has considered the events in their entirety when he awarded the $150.00 in compensation. I find that he also considered the ongoing conflict from 2015 when he dismissed the Tenant's application for aggravated damages.

I therefore find that the principle of res judicata applies and that it would be inappropriate for me to consider whether the Tenant is entitled to further compensation for aggravated damages or loss of quiet enjoyment arising from the manner in which the Landlord responded to the conflict between the Tenant and other occupants of the residential complex.

I note that the Tenant duplicated the claim of $1,038.00 made in this claim when she filed the Application for Dispute Resolution that was considered at the hearing on December 08, 2017, although she claimed several additional amounts in this Application for Dispute Resolution. Regardless of the fact the amounts differ in the two claims, I find that the Tenant's claim for compensation for loss of quiet enjoyment and aggravated damages relates to the same series of events.

The following passages from the text: **Res Judicata**, Spencer-Bower and Turner, 2nd ed. (London: Butterworths, 1969) were expressly adopted and applied to circumstances analogous to those before me on this application in the decision of the Supreme Court of British Columbia In *London Life Insurance Company v. Zavitz et al*, [1990] S.C.B.C., Vancouver Registry No. C881705:

At page 359 of **Res Judicata** the required elements to support a plea of "former recovery" are set out:

(i) That the former recovery relied upon was obtained by such a judgment as in law can be the subject of the plea.

(ii) That the former judgment was in fact pronounced in the terms alleged;

(iii) That the tribunal pronouncing the former judgment had competent jurisdiction in that behalf;

(iv) That the former judgment was final;

(v) That the Plaintiff, or prosecutor, is proceeding on the very same cause of action, or for the same offence, as was adjudicated upon by the former judgment;

(vi) That the parties to the proceedings, or their privies, are the same as the parties to the former judgment, or their privies.

The learned author commented further at p. 380:

> ... where there is substantially only one cause of action, and it is a case, not of "splitting separable demands", but of splitting one demand into two quantitative parts, the plea [of **res judicta**] is sustained. In homely phrase, a party is entitled to swallow two separate cherries in successive gulps, but not to take two bites at the same cherry. He cannot limit his claim to a part of one homogeneous whole, and treat the inseparable residue as available for future use, like the good spots in the curate's egg.
> ... Thus, where the omitted matter is a portion of the entire sum, or an item or parcel of the entire property, recoverable on a single cause of action, the judgment is a bar to any subsequent action in respect of such omitted matter.

I find that the Tenant has attempted to split one homogenous claim into two quantitative parts when she filed two applications for financial compensation. I therefore find that the final and binding decision rendered on December 12, 2017 constitutes a bar to any second claim.

The Tenant's application for a monetary Order is dismissed, without leave to reapply, as the principle of res judicata applies.

On the basis of the undisputed evidence and the One Month Notice to End Tenancy for Cause, dated March 27, 2017, I find that the Tenant was served with a One Month Notice to End Tenancy that did not provide sufficient details of why the Landlord was ending the tenancy. Although the Notice to End Tenancy provides a general description of the reasons to end the tenancy, I find that the Landlord did not clearly specify the issues in dispute. Specifically, the Landlord did not provide any dates, times, people or other information that explains who, what, where and when caused the issue, as it was directed to do in the Details of Cause portion of the Notice to End Tenancy.

I find that the Landlord's failure to provide this information breached the rules of procedural fairness as it prevented the Tenant from understanding the full details of the reasons for ending the tenancy and it interfered with her ability to respond to the

allegations being made by the Landlord. I find that to be particularly true in these circumstances as there were a large number of allegations regarding the Tenant and it would be unreasonable to expect the Tenant to know which allegations led to the service of this particular One Month Notice to End Tenancy.

Section 47 of the *Act* allows a landlord to end a tenancy for a variety of reasons, providing the landlord serves the tenant with a One Month Notice to End Tenancy for Cause that complies with section 52 of the *Act*.

Section 52(d) of the *Act* stipulates that to be effective a notice to end tenancy must be in writing and, except for a notice under section 45 (1) or (2) of the *Act*, state the grounds for ending the tenancy. I find that the One Month Notice to End Tenancy, dated March 27, 2017, does not comply with section 52(d) of the *Act* because it does not provide the Tenant with reasonable details of the reasons for ending the tenancy.

Section 52(e) of the *Act* stipulates that to be effective a notice to end tenancy must be in writing and, when given by a landlord, be in the approved form. The approved form for serving a One Month Notice to End Tenancy is #RTB-33 (2016/12). I find that a landlord has an obligation to complete all relevant areas on the #RTB-33 prior to serving it, including completing the Details of Cause portion of the Notice to End Tenancy.

I find that the One Month Notice to End Tenancy for Cause, dated March 27, 2017, is not effective because it does not comply with section 52(d) and 52(e) of the *Act.* I therefore grant the Tenant's application to set aside this Notice to End Tenancy.

On the basis of the Landlord's submission and the Tenant's letter of April 10, 2017, I find that the Tenant received the second One Month Notice to End Tenancy for Cause and Schedule A, which the Landlord contends was placed in her mail box on April 07, 2017.

Although the Tenant refers to this as an "amended" One Month Notice to End Tenancy, I find that it should be considered a new Notice to End Tenancy. In reaching this conclusion I was influenced by the fact this second Notice to End Tenancy is undated and in the Details of Cause section of the Notice the Tenant is referred to Schedule A, which was attached to the Notice.

In determining that this second One Month Notice to End Tenancy is a new Notice to End Tenancy, I was further influenced by my understanding that a landlord does not have the right to amend a Notice to End Tenancy.

Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be in writing and be signed and dated by the landlord or tenant giving the notice. I find that the second One Month Notice to End Tenancy for Cause does not comply with section 52(a) of the *Act* because it is not dated by the Landlord.

I find that the second One Month Notice to End Tenancy for Cause is not effective because it does not comply with section 52(a) of the *Act.* I therefore find that the Landlord does not have the right to end this tenancy on that basis of this second Notice to End Tenancy.

I specifically note that my decision that the Notices to End Tenancy that are the subject of this dispute are not effective should not be interpreted as a decision that I find the Landlord did not have legitimate grounds for serving the Notices. Rather, it is simply a finding that the Notices to End Tenancy themselves are flawed.

Conclusion

The Tenant's application for a monetary Order is dismissed, as the principle of res judicata applies.

The Tenant's application to set aside the One Month Notice to End Tenancy for Cause is granted.

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: January 18, 2018

Residential Tenancy Branch