Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAKONYI HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC; CNC, OLC, LRE, LAT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order of possession for cause, pursuant to section 55.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 30, 2017 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70; and
- authorization to change the locks to the rental unit, pursuant to section 70.

The "first hearing" on December 29, 2017 lasted approximately 97 minutes and the "second hearing" on January 5, 2018 lasted approximately 128 minutes. In total, both hearings lasted approximately 225 minutes, which is 3 hours and 45 minutes.

The landlord's two agents, landlord RB ("landlord") and "landlord DR," and the tenant attended both hearings. "Landlord DB" attended the first hearing only. "Landlord VB" attended the second hearing only but did not testify.

At both hearings, all parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties confirmed that they would not be calling any witnesses at both hearings.

At the first hearing, the landlord and landlord DB confirmed that they were the directors of the landlord company named in this application and that landlord DR was their building manager of the rental unit. At the second hearing, the landlord confirmed that landlord VB was the owner of the rental unit. All four agents confirmed that they had authority to speak on behalf of the landlord company at this hearing.

The second hearing began at approximately 11:00 a.m. and ended at approximately 1:08 p.m. At the beginning of the second hearing, another Arbitrator identified himself in the hearing with different parties for a different file, all of whom had called into the same teleconference. When these other parties exited the conference at approximately 11:05 a.m., all parties were unexpectedly disconnected from the hearing, including myself. However, the landlord, landlord DR, landlord VB, the tenant and I all called back into the teleconference immediately and I continued the hearing with the above parties without any further interruption by any other parties.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on December 29, 2017, was adjourned after 97 minutes of attempted settlement negotiations.

By way of my interim decision, dated December 29, 2017, I adjourned both parties' applications to be heard on January 5, 2018. At the first hearing, I notified both parties that the adjournment of the hearing was to continue the hearing process because the parties were unable to settle after 97 minutes. This information was contained in my interim decision.

At the second hearing, both parties confirmed that they had not submitted any further evidence after the first hearing and that they did not wish to call any witnesses at the second hearing. At the second hearing, both parties confirmed that they did not wish to settle their applications, but they wanted to proceed with a hearing. Accordingly, I proceeded on that basis. The testimony from both parties referenced in this decision is from the second hearing, not the first hearing, unless specifically noted below.

At the first hearing, both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

At the first hearing, the landlord objected to me considering the tenant's one-page fire inspection report at this hearing. I notified both parties during the first hearing that I would consider the tenant's one-page fire inspection report. At both hearings, the tenant confirmed that he was not calling any witnesses, including the inspectors from the report, so the landlord confirmed that he would respond to the above report verbally during the hearing.

At the second hearing, the landlord testified that the tenant was served with the 1 Month Notice on October 31, 2017, by way of posting to his rental unit door. The tenant confirmed receipt on November 2, 2017. In accordance with sections 88 and 90 of the Act, I find that the tenant was duly served with the 1 Month Notice on November 2, 2017.

Preliminary Issue – Claims Decided at Previous Hearing

Both parties agreed that they attended a previous Residential Tenancy Branch ("RTB") hearing on November 8, 2017, after which a decision of the same date was issued by a different Arbitrator. The file number for the previous hearing appears on the front page of this decision. The previous decision dismissed the tenant's application for an order restricting the landlord's right to enter the rental unit and for an order requiring the landlord to comply.

The tenant confirmed that he did not receive a copy of the previous decision at the time that he filed this current application on November 9, 2017. He claimed that he filed this application in order to deal with the same issues as the previous hearing. He said that no new circumstances had arisen since the last hearing date on November 8, 2017 until the second hearing date of January 5, 2018.

The landlord argued that these same issues have already been decided at the previous RTB hearing and are *res judicata*. I agree. The tenant's own testimony confirms this.

Accordingly, the tenant's application to restrict the landlord's right to enter the rental unit and for an order requiring the landlord to comply, are *res judicata* and have been decided at the previous hearing by a different Arbitrator. I also find that the tenant's application for authorization to change the locks to the unit is related to his application to restrict the landlord's right to enter the rental unit and I dismiss this portion without leave to reapply. The tenant provided no new evidence to support these applications, since the previous hearing date of November 8, 2017.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession against the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began in October 1991. Monthly rent in the current amount of $1,045.00 is payable on the first day of each month. A security deposit of $342.50 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by both parties.

The landlord seeks an order of possession based on the 1 Month Notice. The tenant disputes the notice. The notice indicates an effective move-out date of November 31, 2017. The landlord issued the notice for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
  - *put the landlord's property at significant risk;*
- *Tenant has caused extraordinary damage to the unit/site or property/park;*
- *Tenant has not done required repairs of damage to the unit/site;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord said that the tenant has been involved in hoarding in his rental unit since 2004. The tenant maintained that the landlord failed to do anything about these issues and did not attempt to evict him until he requested renovations and repairs beginning in August 2017. The landlord stated that between August 8, 2017 and October 31, 2017, the landlord attempted to work with the tenant and provide him with multiple opportunities to clean his rental unit to bring it back to a habitable state. The landlord said that the tenant initially agreed to improve and then backed out of his agreements later.

The landlord testified regarding the following facts. He received a letter from the tenant on August 8, 2017, indicating repairs needed to be done in his rental unit. On August 17, 2017, the landlord inspected the tenant's rental unit and indicated that the condition caused health and safety concerns, and provided the tenant with time to clean. On August 29, 2017, the landlord received a letter from the tenant's lawyer alleging human rights violations and discrimination against the tenant. On September 16, 2017, the landlord responded to the tenant's lawyer allowing the tenant until September 25, 2017, to clean the rental unit or he could face eviction. After receiving no reply from the tenant or his lawyer, the landlord issued inspection notices on September 29, 2017 and October 2, 2017, alerting to health and safety issues.

The landlord claimed that he performed an inspection of the rental unit on October 6, 2017, after providing notice to the tenant and the tenant allowing access to the rental unit. He said that the tenant made a request for repairs to be done in his rental unit, for leaky kitchen and bathroom sinks. The tenant claimed that the landlord is retaliating against him and attempting to evict him because he requested repairs to be done, which brought about the inspection. The landlord said that upon personally viewing the rental unit, he could not even open the front door all the way and there was clutter from the floor to the ceiling in the living room. He stated that the tenant had numerous cabinets, boxes and shelving units of storage items from the floor to the ceiling in the second bedroom. He said that there was more storage shelving units in the main bedroom. He maintained that he told the tenant that this was a fire, smoke and emergency problem. The landlord explained that the tenant refused for the landlord to take photographs of his rental unit at that time.

The landlord testified that he returned to the tenant's rental unit on October 20, 2017, for another inspection, and the tenant had cleaned a little but refused to allow landlord DR into the unit. The tenant testified that the landlord agreed that he had made some progress with his cleaning. The landlord maintained that a plumber came to inspect and repair the leaks in the rental unit on October 23, 2017. The landlord produced a letter, dated October 31, 2017, from the plumber, indicating his observation of the condition of the rental unit. The plumber indicated that it was difficult and unsafe to work, that the tenant had boxes and newspapers all over the rental unit, and that if he was called to work there in the future, the rental unit needed clean access. The tenant disputed this letter, indicating that the plumber did not see his entire rental unit, that he only worked in the kitchen and bathroom, and that he only saw the entrance and living room while working there, not the long corridor hallway or the two bedrooms. The landlord maintained that he sent a letter to the tenant to do another follow-up inspection a week or two later, but the tenant refused.

Landlord DR testified that approximately four to five years ago he went to the fix the boiler and inspected the tenant's rental unit, citing safety concerns and asking the tenant to clean up. He said that in a letter from August 8, 2017, the tenant requested full renovations to be done in his rental unit but he advised the tenant that it could not be done because it was so unclean in the unit. He stated that two years ago, the tenant called him regarding mice in his rental unit so he went to fix the holes where the mice were entering but notified the tenant to remove the temptation for the mice, by cleaning his rental unit. The tenant explained that since the landlord fixed the holes where the mice were entering, he has not had any mice problems since. Landlord DR said that the tenant requested new appliances for his unit and because landlord DR was unable to help him, he went to the landlord and landlord DB for help. He said that the tenant has alleged discrimination against the landlord during the above times, but that has nothing to do with these tenancy issues. The tenant provided a number of emails and written statements indicating that the landlord was racially discriminating against him.

The tenant testified that the landlord and his agents have made impromptu visits to the rental unit, initially indicating they were without notice, and later clarifying that the landlord had not performed illegal inspections in his rental unit. The tenant claimed that landlord DR inspected and took photographs of the rental unit on July 8, 2017. He said that he had no time to clean prior to this inspection, that his kitchen counter was not cleared and that his workstation was in disarray. He stated that landlord DR threatened further inspections and indicated the tenant would have five to six months to leave the rental unit.

The tenant explained that he believes his rental unit is clean, that he did not know the landlord's standards for cleanliness as their requirements keep changing, and that he cleaned only because the landlord said it was a problem not because he thinks there is a problem. He said that he called the hoarding section of the fire department and they completed a one-page report checklist on December 8, 2017, indicating his rental unit is acceptable. He stated that this report is authentic with a city logo on it and that he did not fabricate it. The tenant explained that he has now cleared up all the empty boxes but he has not notified the landlord that he has remediated the situation. He claimed that it is up to the landlord to return and re-inspect his rental unit.

Analysis

Overall, I found the landlord, landlord DB and landlord DR to be more credible witnesses than the tenant, as I found their testimony to be more straightforward and consistent than the tenant's testimony. I found that the tenant frequently changed his testimony throughout the hearing. Once questioned about his position regarding an issue, the tenant would then revert to a former position or a new position so it was difficult to follow his testimony. I note that during both hearings, the tenant spoke for most of the hearing time, as compared to the landlord's agents.

I am satisfied that the landlord issued the 1 Month Notice for a valid reason. I find that the tenant put the landlord's rental unit at significant risk. I find that the tenant failed to abide by section 32 of the *Act*, to "maintain reasonably health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access." I find that the landlord produced sufficient documentary and testimonial evidence to show that the condition of the tenant's rental unit creates a significant risk to the rental unit, the rental building and the other occupants in the rental building.

The landlord provided copies of photographs to show the state of the rental unit. Landlord DR testified about taking these photographs and the hazardous state of the rental unit. The landlord and landlord DR all testified about the state and condition of the rental unit based on their own personal observations during inspections of the unit. The landlord produced a letter from a plumber who attended at the rental unit, regarding the condition of the rental unit. I have taken into account, when determining the limited weight to be given to this letter, that the plumber did not testify at this hearing as a witness but the only issue raised by the tenant regarding the letter was that the plumber did not see the tenant's entire rental unit. While I accept this, I find that the plumber saw certain parts of the tenant's rental unit on that day and reported his observations, which were not challenged by the tenant. I also note that the plumber's letter supports the personal observations made by the landlord and landlord DR of the condition in the rental unit.

The landlord provided copies of emails between the parties asking the tenant to clean the rental unit, giving inspection notices, and documenting the continuing hazardous state of the rental unit with very little improvement over time. The landlord attended at the rental unit multiple times to inspect before issuing the 1 Month Notice to the tenant. The landlord attempted numerous times between August 8 and October 31, 2017, prior to the 1 Month Notice being issued to the tenant, to work with the tenant in order to allow him time to clean his rental unit. The landlord provided verbal and written

warnings to the tenant and allowed him additional time to clean before re-inspecting but saw little improvement over time.

I find that the tenant acknowledged the cleanliness issues in his rental unit, through his testimony and email communications with the landlord. During the second hearing, the tenant stated that his rental unit was not sufficiently clean for the landlord to inspect on the day after the second hearing on January 5, 2018. He claimed that his papers were in disarray because he was preparing for the second hearing. Earlier in the second hearing, the tenant testified that his rental unit was clean and he did not have a hoarding problem. He later changed his testimony to claim that his rental unit was usually clean and that because he works from home, his papers are all over the rental unit.

During the second hearing, the tenant agreed that he sent an email to the landlord on October 16, 2017, two weeks before being issued the 1 Month Notice, accepting the landlord's "legitimacy of safety concerns" regarding the condition of his rental unit. The tenant then went on in the email to ask why the landlord did not do anything about it for 26 years and asking whether the landlord performed other similar inspections for other rental units.

The tenant also stated that landlord DR came into his rental unit in July 2017, in order to take photographs, rather than to address the tenant's complaints regarding repairs. He said that because he was surprised, he did not have time to clean his kitchen and living room. Later, he claimed that those were not photographs of his rental unit. The landlord then asserted that they were photographs of the rental unit and that he had not fraudulently submitted them for this application. In response, the tenant later retracted his statement, acknowledging they were indeed photographs of his rental unit.

I find that the landlord discharged the burden of showing that the landlord issued the 1 Month Notice for a valid reason that the tenant put the landlord's property at significant risk. Overall, the landlord, landlord DB, and landlord DR provided credible testimony regarding their observations and documents supporting the landlord's application.

I find that the tenant failed to refute the reason on the 1 Month Notice. I find that the tenant failed to provide sufficient documentary evidence to show that he cleaned his rental unit to an appropriate standard such that he was not putting the landlord's property at significant risk, after being served with the landlord's 1 Month Notice. When the landlord attempted to inspect the unit after issuing the notice, the tenant prevented entry, claiming that the landlord could only inspect his rental unit a maximum of once

per month, as per the *Act*. He said that the landlord had to attend after November 21, 2017; the landlord claimed that he did not re-inspect, wanting to avoid further escalation of the tension between the parties and in anticipation of the previous hearing on November 8, 2017 and these two hearings on December 29, 2017 and January 5, 2018.

The tenant denied the landlord's allegations and claimed that he had an inspection done by the fire department. Yet, the landlord disputed the entire fire department report, indicating that the tenant did not authenticate the one-page report, did not produce the authors of the report to testify and did not provide an explanation of the report. I agree and I have taken this into account when attaching very little weight to this report.

As I have found one of the reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

On a balance of probabilities and for the reasons stated above, I allow the landlord's application to obtain an order of possession for cause. The tenant's application to cancel the landlord's 1 Month Notice, dated October 30, 2017, is dismissed without leave to reapply.

I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on February 28, 2018, pursuant to section 55 of the *Act*. The landlord indicated during the second hearing that the above date would provide the tenant with an appropriate amount of time for him to vacate the rental unit. I find that the landlord's 1 Month Notice, dated October 30, 2017, complies with section 52 of the *Act*.

Conclusion

The landlord's application to obtain an order of possession for cause is allowed.

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on February 28, 2018**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The tenant's application to cancel the landlord's 1 Month Notice, dated October 30, 2017, is dismissed without leave to reapply.

The tenant's application for authorization to change the locks to the rental unit is dismissed without leave to reapply.

The remainder of the tenant's application is *res judicata*.

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 24, 2018

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON FEBRUARY 7, 2018
AT THE PLACE INDICATED.