



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF, CNC, OLC, PSF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony that the landlord served the tenant with the notice of hearing package in person. Both parties also confirmed the service of the submitted documentary evidence of the other party. Neither party raised any issues with the service of the notice of hearing package or the submitted documentary evidence. I accept the undisputed affirmed evidence of both parties and find that each party has been sufficiently served as per section 90 of the *Act*.

Preliminary Issue

During the hearing the tenant clarified that she was seeking the return of her security deposit prior to ending the tenancy. It was explained to both parties that the return of a security deposit by a landlord must follow the end of a tenancy. The tenant also amended her application to

include a monetary claim for aggravated damages of \$9,000.00 as a result of being served a 1 Month Notice for loss of quiet enjoyment. It was also clarified with both parties that the tenant's monetary claim for compensation was also pre-mature as the tenant has only provided details of one a 1 month notice issued by the landlord. As such, the tenant's application for return of the security deposit and compensation are dismissed with leave to reapply as they are premature.

The hearing proceeded on the applications for an order of possession as a result of a 1 Month Notice issued for Cause and a monetary claim for damage and recovery of the filing fee by the landlord and an order cancelling the 1 Month Notice, an order for the landlord to provide services of facilities and an order for the landlord to maintain the property and change the locks.

The hearing was adjourned due to a lack of time. Both parties were directed, no further evidence was to be submitted, nor shall it be accepted. On January 9, 2018 the hearing was reconvened with both parties.

On adjournment, the tenant submitted an amendment to the application during the interim period following the issuance of the interim decision dated October 12, 2017. The tenant sought to submit evidence and to amend the application adding a monetary claim for compensation for 80% of rent over a 2 month period for \$3,600.00 as the tenant sought relief from having insufficient heat as a result of not allowing the landlord to turn on the furnace. I find that these claims are not necessary and are not related to the existing issue(s) set down for the hearing to proceed. As such, these portions of the tenant's amendment are dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Is the tenant entitled to an order for the landlord to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to an order for the landlord to provide services or facilities agreed upon, but not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that a signed tenancy agreement was made, but that neither party had submitted a copy. Both parties confirmed that this tenancy began on August 15, 2014 on a 1 year fixed term tenancy. The monthly rent was \$1,550.00 payable on the 1st day of each month.

The landlord seeks an order of possession as a result of a 1 Month Notice to End Tenancy issued for Cause dated June 30, 2017 and a monetary claim of \$455.00 for damage (broken window) and recovery of the filing fee.

The tenant seeks an order cancelling the 1 Month Notice dated July 11, 2017, an order for the landlord to provide maintenance (cleaning of furnace ducts), to change the locks and not provide a key to the landlord.

During the hearing it was clarified with both parties through extensive discussions that the landlord failed to serve the tenant with the 1 Month Notice dated June 30, 2017. As such, this portion of the landlord's application is dismissed without leave to reapply and the 1 Month Notice dated June 30, 2017 is set aside.

Both parties confirmed that on July 11, 2017, the landlord served the tenant with the 1 Month Notice dated July 11, 2017 in person. The 1 Month Notice sets out an effective end of tenancy date of August 11, 2017 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - 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;
 - put the landlord's property at significant risk; or
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

In the details of cause listed on the 1 Month Notice, it states in part that the police were called on two occasions on July 10 and July 11 which has unnecessarily disturbed other occupants and the landlord.

The landlord provided affirmed testimony claiming that the tenant had as a term of the tenancy agreement agreed to buy tenant's insurance and failed to do so. During the hearing this reason for cause was addressed and both parties were notified that a tenancy cannot be subject end due to failing to obtain tenant's insurance. This portion of the landlord's claim was dismissed without leave to reapply.

The landlord provided affirmed testimony that excessive noise was caused by the tenant as an altercation occurred between her and her roommate which triggered a call to the police by the tenant early in the morning which disturbed the other occupants of the rental property. The landlord claims that the tenant was given two verbal cautions in May and June of 2017 to stop

disturbing the peace of the rental property. The tenant disputed these claims stating that there were only 2 occasions in the last 3 years of any incidents and that the landlord has never cautioned her or provided any notice(s).

The landlord claims that the tenant has caused a fire hazard in the rental premises by cluttering it with paper and cardboard throughout and has seriously jeopardized the health, or safety or lawful right of another occupant or the landlord. The landlord stated that the tenant smokes inside the rental premises. The tenant disputes these claims stating that she smokes "outside only" and that the condition of the rental premises has been the same during her tenancy for which the landlord has never given a caution to.

The landlord's third reason for cause of putting the landlord's property at significant risk is that the landlord claims that on March 7, 2017 a water leak occurred in the ceiling when a water pipe burst and the tenant failed to immediately notify the landlord to allow him to respond right away to the emergency to prevent further damage. The landlord stated that the tenant did not notify him until March 13, 2017. The tenant disputes the landlord's claims stating that the leak occurred on March 10, 2017 which became a sudden flood. The landlord has submitted a copy of an estimate dated March 27, 2017 which details drywall repairs for damaged ceiling and walls.

The landlord also claims that the tenant sublet the rental premises without the landlord's written consent. The landlord claims that this is renting out one bedroom to a roommate. The tenant confirmed that she has had a roommate, but that the landlord has been aware of the situation and approved of it. The landlord confirmed that he has been aware of the tenant renting out one of the bedrooms for over one year and that the tenant had one roommate for 2 years and 6 roommates over a one year period. The landlord claims that several verbal warnings were given to the tenant to stop subletting. The tenant disputes this stating that she has never received a warning from the landlord on subletting. The tenant argues that the landlord has been aware of each of her roommates and had approved them.

The landlord seeks a monetary claim of \$455.00, but has failed to provide any details of this claim. Both parties were advised that as such, this portion of the landlord's claim is dismissed with leave to reapply.

The tenant also seeks an order for maintenance of the furnace ducts to have them cleaned. The tenant stated that she has respiratory issues and that the cleanliness of the ducts is important for her health. The landlord disputes the tenant's claims stating that he scheduled a contractor to clean the ducts which were later cleaned in July 2017. The tenant argues that the landlord has never cleaned the ducts as she has never received notice of entry for the cleaning.

The tenant seeks an order to have the landlord change the locks and not provide a key to the landlord as she does not trust the landlord. The tenant stated that she has never given notice to the landlord requesting the locks to be changed. The landlord argues that he needs to have a

key due to emergencies as proven by the tenant's lack of notice of the emergency water leak that was not reported in a timely manner.

The tenant seeks an order to have the landlord clean the exterior windows as they have never been cleaned since she became a tenant. The landlord disputes this claim stating that he has tried to clean the exterior windows, but was prevented by the tenant.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the landlord has claimed that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant has disputed this claim confirming that an incident did take place on July 10, 2017, but that this had never occurred prior. The landlord provided affirmed testimony that the tenant had been given verbal notice(s) of caution over excessive noise. The landlord was unable to provide sufficient evidence to support this claim. As such, I find that the landlord has failed to prove on a balance of probabilities this first reason for cause listed on the notice. This portion of the application is dismissed without leave to reapply.

On the landlord's second reason for cause seriously jeopardized the health, or safety or lawful right of another occupant or the landlord by having the rental premises cluttered with paper/cardboard which causes a fire hazard, I find that the landlord has failed. The tenant has disputed the landlord's claim and stated that she only smokes outside. The landlord has failed to provide sufficient evidence that the tenant has put the landlord's property at risk. This portion of the application is dismissed without leave to reapply.

On the landlord's third reason for cause putting the landlord's property at significant risk by failing to notify the landlord of a water leak in a timely manner. Both parties confirmed that a water leak occurred. The landlord claims that a water leak occurred on March 7, 2017. This is disputed by the tenant who stated that the water leak began on March 10, 2017. Both parties confirmed that the tenant notified the landlord on March 13, 2017. I find that although the date of the water leak beginning is in dispute, I find in the tenant's direct testimony that she noticed the water leak on March 10, 2017 and reported it to the landlord on March 13, 2017. On this basis, I find that the tenant's notification to the landlord was delayed unnecessarily which could have prevented further damage had the tenant notified the landlord immediately. On this basis, I find that the landlord has proven on a balance of probabilities that the tenant put the landlord's

property at risk. The 1 Month Notice dated July 11, 2017 is upheld. The tenant's application to cancel the 1 Month Notice is dismissed. As such, the landlord is entitled to an order of possession. As the effective date of the 1 Month Notice has now passed, the order of possession shall be effective 2 days after service.

As the tenancy is at an end, I decline to make any further findings on the landlord's reason for cause of subletting.

The tenant also seeks an order for the landlord to comply with the Act, Regulations or Tenancy Agreement and to provide services or facilities agreed upon but not provided. The tenant's request to clean the air duct, clean exterior windows and change the locks and not provide the landlord with a key are dismissed as the tenancy is at an end.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, 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: February 1, 2018

Residential Tenancy Branch