Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, MNDCT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking to cancel the One Month Notice to End Tenancy for Cause (the "One Month Notice"), authorization to change the locks, a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, an order suspending or setting conditions on the Landlord's right to enter the rental unit, and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision will be mailed to him at the dispute address. At the request of the Landlord, copies of the decision and any Order of Possession issued in his favor will be e-mailed to him at the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I advised the parties that given the house sitting agreement in the documentary evidence before me, I needed to ascertain whether or not I have jurisdiction to hear and decide this matter.

The parties agreed that the Tenant moved into the property on September 1, 2015, and that a security deposit in the amount of $500.00 was collected by the Landlord. The parties agreed that the Tenant paid $1000.00 a month in rent, plus the cost of utilities, until December 1, 2017, when the rent was increased to $1037.00 as the result of a Notice of Rent Increase served on the Tenant in July or August of 2017.

Despite the fact that a house sitting agreement was originally signed by both parties, the testimony in the hearing and the actions of the Landlord in serving a Notice of Rent Increase clearly indicate to me that a tenancy exists. As there is no evidence before me that the tenancy is excluded under section four of the *Act*, I therefore accept jurisdiction to hear and decide this matter.

Preliminary Matter #2

Although the Tenant applied to cancel a One Month Notice to End Tenancy for End of Employment, the Notice to End Tenancy in the documentary evidence before me is actually a One Month Notice to End Tenancy for Cause. As the same form can be used to end a tenancy for cause and for end of employment, the Tenant acknowledged they simply made an error when filling out the Application. As it was clear on the evidence before me that the Tenant received and intended to dispute a One Month Notice to End Tenancy for Cause, the Application was therefore amended in the hearing pursuant to the *Act* and section 4.2 of the Rules of Procedure in order to reflect the correct Notice to End Tenancy being disputed.

Preliminary Matter #3

Although the Landlord acknowledged receipt of the Tenant's documentary evidence, the Tenant testified that he had received little documentary evidence from the Landlord. When asked, the Landlord acknowledged that he did not serve three pieces of the evidence before me on the Tenant, including a document from the police dated February 16, 2018, a witness statement signed February 19, 2018, and a witness

statement signed March 23, 2018, as he felt they contained sensitive and confidential information. The Landlord stated that the witness statement signed March 23, 2018, was also not served on the Tenant as it was received only three days before the hearing. The Landlord testified that all of the other documents in the evidence before me were served on the Tenant by registered mail on March 6, 2018, and provided me with the registered mail tracking number. The Tenant disputed that this evidence had been served on him and testified that he only ever received a letter to the arbitrator from the Landlord, a registered mail receipt, a copy of an e-mail chain, several photographs of a door, and copies of text messages between himself and the Landlord. The Tenant also confirmed that he had previously received a decision from the Branch regarding a previous hearing between himself and the Landlord, which the Landlord submitted for my consideration in this matter.

Section 3.15 of the Rules of Procedure states that the respondent must ensure that the evidence they intend to rely on at the hearing is served on the applicant as soon as possible, and in any event, not later than seven days before the hearing. The ability to know the case against you and to provide evidence and testimony in your defense are fundamental to the dispute resolution process. As the Landlord acknowledged that he did not serve the document from the police dated February 16, 2018, and the witness statement signed February 19, 2018, on the Tenant, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept this evidence for consideration. As a result, this evidence was excluded from consideration in this matter.

Although I acknowledge that the witness statement dated March 23, 2018, was created and signed only three days before the hearing, it refers to an incident on March 12, 2018. When asked why this document was not created and submitted sooner, the Landlord stated it was due to scheduling difficulties.

Rule 3.17 of the Rules of Procedure states that the arbitrator has the discretion to determine whether to accept evidence not provided to the other party or served on the Branch in accordance with the *Act* or the Rules of Procedure, provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Although the document was created only three days before the hearing, I find that it was open to the Landlord to have created and submitted the document as early as March 12, 2018. Although the Landlord stated scheduling differences prevented him from getting the document any sooner, there is no evidence before me from the witness to corroborate this testimony. In any event, I do not find that scheduling difficulties between the Landlord and his witness constitute

sufficient grounds for accepting evidence for consideration in this matter that was not only late but was never served on the Tenant. As stated above, the ability to know the case against you and to provide evidence and testimony in your defense are fundamental to the dispute resolution process and I find that it would be prejudicial to the Tenant and a breach of both the Rules of Procedure and the principles of natural justice to accept this evidence for consideration. As a result, the witness statement signed March 23, 2018, has been excluded from consideration in this matter.

Despite having received evidence from the Landlord, the Tenant argued that it should be excluded from consideration in this matter as he only received it three days before the hearing on March 23, 2018. The Landlord testified that his evidence was sent to the Tenant by registered mail on March 6, 2018, and provided the registered mail tracking number. The Tenant stated that the Landlord has access to his mail and alleged that the Landlord stole the first attempted delivery notice. The Tenant testified that he could not confirm or deny that he received a final delivery notice but stated that in any event, he picked up the registered mail on March 23, 2018.

Although the Tenant also alleged that the Landlord stole his first registered mail delivery notice from his mailbox, he did not submit any evidence to corroborate this testimony. As a result, I find his allegation that the Landlord stole the delivery notice from his mailbox speculative in nature and I give it no weight.

Although the Tenant testified that he did not receive all of the evidence the Landlord states he served on him, I note that the Landlord was honest and forthright in the hearing regarding three pieces of evidence not served on the Tenant. I also note that the Tenant objected, without any real or persuasive reason, when I proposed tracking the registered mail online to determine when it was actually sent by the Landlord and received by the Tenant. Further to this, I note that the Landlord himself submitted tracking information for the registered mail with his documentary evidence which matches the testimony he provided in the hearing. Based on the above and on a balance of probabilities, I find the Landlord's testimony more reliable and I therefore accept that he sent all of the documentary evidence before me, with the exception of the three above noted documents, to the Tenant on March 6, 2018.

Section 90 of the *Act* states that a document given or served by mail, unless earlier received, is deemed to be received on the fifth day after it is mailed. Although the Tenant testified that he did not pick up the registered mail until March 23, 2018, the Landlord testified that it was mailed March 6, 2018, and provided the registered mail tracking number. Pursuant to section 90 of the *Act*, I therefore find that it was deemed

served on the Tenant on March 11, 2018, regardless of the fact that the Tenant failed to pick it up from the post office until march 23, 2018. As March 11, 2018, was at least seven days prior to the hearing, I find that it was served on him by the Landlord in accordance with the Rules of Procedure and I therefore accept it for consideration in this matter.

Preliminary Matter #4

The Tenant filed an Application seeking multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. I also note that the parties were given a priority hearing date specifically to deal with the One Month Notice. As a result, I exercise my discretion to dismiss the Tenants claims for authorization to change the locks, a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, an order suspending or setting conditions on the Landlord's right to enter the rental unit, and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement. The Tenant is granted leave to re-apply for these matters.

Preliminary Matter #6

In the hearing the Landlord stated that he is also seeking monetary compensation form the Tenant, however, the Landlord has not submitted his own application. The Landlord acknowledged that he has not filed his own application and stated that his understanding from conversations with the Branch is that he could bring the issues to my attention in this hearing. I advised the parties that pursuant to section 6.2 of the Rules of Procedure, the hearing is limited to the matters claimed on the application. Further to this, the ability to know the case against you and present evidence in your defense is fundamental to the dispute resolution process. As the Landlord did not file his own application there was therefore no way for the Tenant to know that the Landlord was seeking a monetary order or to provide evidence in his defense. As a result, I find that it would be fundamentally unfair to amend the application to include a monetary claim form the Landlord. The Landlord was therefore advised that he could submit his

own claim to the Branch should he wish to do so and the hearing proceeded based on the Application before me from the Tenant.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began September 1, 2015 and that rent in the amount of $1037.00 is currently due on the first day of each month.

The Landlord testified that the Tenant has repeatedly refused to grant him access to the unit for the purpose of completing an inspection despite the fact that he has issued written notice to the Tenant at least 24 hours in advance. As a result, the Landlord stated that he sent the Tenant a One Month Notice by registered mail on January 11, 2018.

The One Month Notice in the documentary evidence before me, dated January 11, 2018, has an effective vacancy date of February 16, 2018, and the gives the following grounds for ending the tenancy:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; and
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The Tenant acknowledged receiving the One Month Notice on January 16, 2018.

The Landlord testified that he has attempted to complete an inspection of the unit on three occasions since December, 2017, and that all three times the Tenant has refused

him access or prevented him from inspecting the unit. The Landlord stated that when he attempted to inspect the unit in December, the Tenant advised him that he could not inspect the unit due to a pending dispute with the Branch. The Landlord stated that when he contacted the Branch he was advised that this is not true and subsequently served the Tenant with written notice that he intended to inspect the unit on January 9, 2018, between 8:00 am and 5:00 pm. The Landlord provided a copy of this written notice in the documentary evidence before me and testified that it was sent to the Tenant by registered mail on January 2, 2018. The Landlord provided a copy of the registered mail receipt, and the tracking number. The Landlord testified that he sent an e-mail to the Tenant on January 2, 2018, advising him of the inspection, a copy of which is in the documentary evidence before me. The Landlord stated that he also sent the Tenant a reminder by text message the day before and provided me with a copy of this text message chain. Despite the above, the Landlord stated that when he and his witness attended the property for the inspection, the Tenant did not answer the door, which was locked from the inside by a swing lock. As a result, the Landlord stated that the property could not be inspected and that the police were called. He also provided me with the police file number in the hearing.

The Landlord stated that on March 6, 2018, he sent the Tenant another written notice that he planned to inspect the apartment on March 12, 2018, between 12:00 pm – 2:00 pm, and provided me with the registered mail tracking number. The Landlord stated that he again sent an e-mail to the Tenant several days in advance advising him of the inspection and that he sent a reminder text message to the Tenant on the day of the inspection. Despite the above, the Landlord stated that when he attended the apartment with his witness to conduct the inspection, he was confronted by the Tenant who threatened him with a knife. The Landlord testified that the police were called by both parties and he was therefore unable to complete the inspection. He also provided me with a second police file number.

The Tenant denied ever receiving written notice of the inspections by registered mail or e-mail. Although he acknowledged receiving the text message on January 8, 2018, he stated that he advised the Landlord that he could not inspect the property as he had not been given 24 hours written notice. The Tenant also acknowledged that the swing lock was engaged on January 9, 2018, and that he was inside the apartment. The Tenant provided contradictory testimony in relation to the inspection on March 12, 2018. First he stated that upon entering the unit, the Landlord and his witness began to immediately disassemble one of the locking mechanisms on the door and the police were called to remove him from the property. Later, the Tenant testified that the Landlord inspected the property for approximately 30 minutes prior to being escorted

from the property by police. The Tenant denied threatening the Landlord and stated that he was actually required to call the police to have the Landlord removed from his unit. The Tenant did not provide any documentary evidence from the police or a police file number for my consideration. Further to this the Tenant stated that the Landlord cannot simply inspect the unit and needs a legitimate reason to enter.

Although the Landlord also sought to end the tenancy based on illegal activity, he did not submit any documentary evidence or testimony that the Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity, or that any such illegal activity, should it have occurred, has caused or is likely to cause damage to the Landlord's property or that it seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant. The Tenant denied that he has engaged in any illegal activity in the rental unit.

Analysis

Based on the documentary evidence and testimony before me, I find that the Tenant was served with the One Month Notice on January 16, 2018, the day he acknowledged receiving it by registered mail.

Section 29 of the *Act* states the following with regards to a landlord's right to enter a rental unit:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;
(e) the tenant has abandoned the rental unit;
(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Although the Tenant argued that the Landlord cannot simply inspect the rental unit and requires a legitimate reason to enter, section 29(2) of the *Act* clearly states that a landlord may inspect a rental unit monthly, provided they comply with the notice requirements under section 29(1)(b) of the *Act*.

While the Tenant stated that he was never given proper written notice of the inspection scheduled for January 9, 2018, the Landlord submitted a copy of the written notice he states was sent to the Tenant by registered mail along with a copy of the registered mail receipt. He also submitted a copy of an e-mail he states was sent to the Tenant on January 2, 2018, regarding the inspection scheduled for January 9, 2018.

Based on the above, and on a balance of probabilities, I find that the Tenant was deemed served with the written notice of the inspection scheduled for January 9, 2018, or January 7, 2018, pursuant to section 90 of the *Act*. As a result, I find that the Tenant was given at least 24 hours written notice by the Landlord of the inspection scheduled for January 9, 2018, in accordance with section 29(1)(b) of the *Act*.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with the landlord of the residential property. As I have already found above that the Tenant was given proper written notice of the inspection scheduled for January 12, 2018, I find that he therefore significantly interfered with the Landlord when he refused to allow the Landlord access to the rental unit on that date for the purpose of a lawful inspection.

Based on the above, I find the Landlord has established sufficient cause, pursuant to Section 47 of the *Act*, to end 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 and the Tenant's application seeking to cancel the One Month Notice is therefore dismissed without leave to reapply. I also find that the One Month Notice issued by the Landlord complies with section 52 of the *Act* as it is

signed and dated by the Landlord, gives the address for the rental unit, states the effective date of the notice and the grounds for ending the tenancy and is in the approved form. Given the above, and pursuant to section 55 of the *Act*, the Landlord is therefore entitled to an Order of Possession. As the corrected effective date of the One Month Notice, February 28, 2018, has passed and rent has been paid for March 2018, the Order of Possession will be effective March 31, 2018.

Although testimony was provided by both parties in the hearing regarding the other reasons for which the One Month Notice was issued, as I have already found above that the Tenancy is ended, I have not made any findings of fact or law in relation to these matters.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 pm on March 31, 2018,** after service of this Order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: March 28, 2018

Residential Tenancy Branch