Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

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

- cancellation of the landlord's One Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord and the landlord's agent S.H. (herein referred to as "the landlord") attended the hearing. The landlord confirmed receipt of the tenant's application and evidence materials served by Canada Post registered mail, and the tenant confirmed receipt of the landlord's evidence package served by being left in the tenant's mailbox. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Tenant's Evidence Not Uploaded to Dispute Website

The tenant's evidence consisting of a copy of the tenancy agreement and one of the landlord's notices to end tenancy, did not appear to have been uploaded to the dispute website, although the tenant stated he had done so. I clarified with the tenant the differences in his versions as compared to the versions uploaded by the landlord. The tenant stated that the copy of the notice to end tenancy he uploaded was not signed by the landlord, and that his copy of the tenancy agreement did not have the landlord's

initials in the box in section 2(b)(ii).

Rule 3.18 of the Residential Tenancy Branch Rules of Procedure provides the following direction regarding evidence not received by an arbitrator:

> *The arbitrator may adjourn a dispute resolution hearing to receive evidence if a party can show that the evidence was submitted to the Residential Tenancy Branch directly or through a Service BC Office for the proceeding within the required time limits, but was not received by the arbitrator before the dispute resolution hearing.*

In accordance with Rule 3.18, I do not find that the tenant has shown that he had submitted evidence for this proceeding within the required time limits and that this evidence was not received. Therefore, I do not find that an adjournment is merited in this matter, and I may only consider the evidence as presented before me in accordance with the Rules of Procedure.

Preliminary Issue – Procedural Matters

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

Further to this, I explained to both parties that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Preliminary Issue – Amendment to the Landlord's Application for Dispute Resolution

At the outset of the hearing, the landlord confirmed that the landlord's last name was not noted correctly on the tenant's application. Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's application to correct the landlord's last name.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession.

Is the tenant entitled to recover the cost of the filing fee for this application from the landlord?

Background and Evidence

The two parties in this matter presented divergent versions of events and there was very little common ground found where the parties agreed on the facts. While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below.

The parties could not agree on the exact date when the tenancy began. The written tenancy agreement submitted into evidence by the landlord stated September 10, 2017, which was agreed to by the tenant. However, the landlord disputed this date and stated that the tenancy began on September 1, 2017.

The monthly rent is $1,950.00 per month. The written tenancy agreement fails to properly indicate when rent is due, both parties agreed to a shared understanding that rent is due on the first of the month. The landlord confirmed continued possession of the $975.00 security deposit that was paid by the tenant on move in.

The landlord submitted into documentary evidence two One Month Notices, dated April 29, 2018 and May 9, 2018. Both parties agreed that there had been a prior One Month Notice, also dated April 29, 2018 that the landlord had provided to the tenant in person, which was not a valid notice as it was not signed, nor did it state the grounds for the notice. Therefore, both parties agreed that the first notice was not valid and not being considered in this hearing today. The tenant denied receiving the second One Month Notice dated April 29, 2018, which the landlord claimed was delivered to the tenant in person. The landlord failed to provide a witnessed proof of service as documentary evidence to confirm the service of this document on the tenant. Therefore, I advised that I am not considering the second One Month Notice as there is no proof of service.

Both parties agreed that the landlord served the tenant with a One Month Notice dated May 9, 2018 by registered mail. As this third Notice was agreed to by both parties as

having been served on the tenant, I advised both parties that the only matter to be considered in this hearing would be the third Notice dated May 9, 2018. As the tenant applied to dispute the first Notice within the allowable time limits, and the subsequent Notices were only issued as a result of the landlord's errors, I advised the parties that I consider the tenant's application as a dispute against all three Notices. Therefore, to clarify, I am considering the matter before me as the tenant's application to dispute the landlord's One Month Notice dated May 9, 2018.

A copy of the notice submitted into evidence by the landlord, states an effective move-out date of July 1, 2018, and indicates the following reasons for seeking an end to this tenancy:

> *Tenant or a 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.*
>
> *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*
>
> *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*
>
> *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

The landlord also checked off all the boxes on the form for reasons related to "illegal activity", as follows:

> *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
> - *damage the landlord's property.*
> - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
> - *jeopardize a lawful right or interest of another occupant or the landlord.*

If a landlord is ending a tenancy for reasons related to “illegal activity”, it is incumbent on the landlord to demonstrate the illegality of the activity. Police involvement resulting in charges being laid or an arrest is the type of evidence that would lend support to a landlord’s reason for ending a tenancy on these grounds. I confirmed with the landlord that they had not required police assistance to address any of the issues involving the tenant, nor had they submitted any police reports into evidence.

In the “Details of Cause” section of the One Month Notice, the landlord has written the following:

> *truck blocking alley exit*repairing truck and pouring/not cleaning causing falls/discarding oil in house plumbing, leaving oily rags/tools in yard/stairs**Smoking marijuana(hot boxing house, setting off downstairs smoke alarm & disactivating own smoke alarm*Combining garbage/food/recycling in bins& causing piles of trash in alley/not placing trash on curb>causing neighbours concern re trash*telling prospective tenants not to rent basement unit & demanding lower unit’s rent in retaliation to 1 month notice*

The landlord also set out the above summary as a list of “actions” by the tenant, with dates and comments, and attached this list to the notice as a separate sheet.

The landlord provided their extensive testimony regarding the reasons for wishing to end the tenancy, based on the above-noted issues outlined in the “Details of Cause” section on the notice. They submitted into documentary evidence photos of: a truck and a motorbike; areas of asphalt with what the landlord described as oil on it; a city garbage bin overstuffed with a bag of garbage in it and some litter around the base; and next to the asphalt, what looked like an oil pan with rags in it and a truck canopy.

The landlord submitted into documentary evidence letters from: a neighbour regarding issues with the poor management of recycling and garbage at the rental unit attracting rodents; the new occupants of the downstairs rental unit in the rental property regarding the tenant telling them that the downstairs rental unit was an illegal basement suite; and a realtor regarding the “unkept and dirty appearance” of the house, including the smell of marijuana and what appeared to be a bowl of vomit on the floor in the downstairs unit.

The landlord referenced a letter dated March 22, 2018 from the landlord to the tenant requesting that the tenant “please separate all refuse into recycling, garbage and food waste”, and to “stop changing oil on the property”.

The landlord testified that they had previously believed the issues with the rental property, such as the smell of marijuana and lack of proper waste management, were caused by the downstairs occupant. After the downstairs occupant moved out of the rental property at the beginning of April 2018, the landlord stated that the issues continued, therefore they now believe the issues are the fault of the upstairs tenant.

The tenant testified that there had been a problem with the amount of garbage due to the number of occupants in the multi-unit rental property. He also stated that an additional amount of garbage was generated when the previous downstairs rental unit occupant moved out. The tenant admitted that on one occasion he did not put out the bins. The tenant stated that the neighbour used compost for their garden, and he suggested that might be attracting rodents to the area.

The tenant testified that he had always been cooperative with any requests from the landlord to accommodate open houses or showings of the property, and stated that the real estate agents had thanked him for his cooperation.

The tenant testified that his vehicles did not block access to the alley and that he moved his vehicles as required, but admitted that for one or two days the vehicles had blocked access. He stated that his car was under repair for approximately one or two weeks and some oil did spill on the driveway. The tenant claimed that he did his best to clean it up.

The tenant admitted that he had smoked in the rental unit a couple of months ago, but noted that there were no terms prohibiting smoking in the tenancy agreement.

The landlord claimed that the tenant had removed the battery to the smoke detector in the rental unit. The tenant claimed that there had never been a battery in the smoke detector until the landlord attended the rental unit at the beginning of May 2018 to put a battery in the smoke detector. The tenant testified that he has not touched the smoke detector since the landlord installed the battery two months ago.

The landlord also began to provide testimony regarding issues with the tenant that had arisen in the week prior to this hearing. I explained to the landlord that it was not relevant to focus their testimony on issues that occurred **after** the One Month Notice

was issued. It is the landlord's burden to justify the reasons for why the notice was issued in the first place, not to try and justify the issuance of the notice after the fact.

Analysis

Section 47 of the *Act* provides that upon receipt of a One Month Notice to End Tenancy for Cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As explained earlier in this decision, the landlord served multiple One Month Notices to the tenant within a short period of time, all for the same reasons, due to the landlord's repeated errors in filling out the forms correctly or serving them correctly. The tenant filed an application to dispute the first One Month Notice provided to him dated April 29, 2018 within the 10-day time limit provided by section 47 of the *Act*.

As such, I find that the tenant's application is also a dispute against the two subsequent One Month Notices dated April 29, 2018 and May 9, 2018, and therefore his dispute against all the One Month Notices was filed within the 10-day time limit provided by section 47 of the *Act*.

The One Month Notice form provides many possible reasons for ending a tenancy to choose from, in consideration of the many circumstances that may occur. However, the top of the form clearly states, "check all boxes that **apply**". This is not an invitation to a landlord to check all boxes, regardless of whether they apply or not, or whether they have sufficient evidence to prove the reasons or not.

I have addressed each of the reasons selected by the landlord in the following sections.

Illegal Activity

I confirmed with the landlord that no police involvement was required in relation to the grounds for issuing the One Month Notice, and that the landlord did not submit any evidence to support any allegation of illegal activity, such as charges laid or arrests made, fines levied for contravention of legislation, etc. The landlord submitted a couple of close-up photos, reportedly taken by a real estate agent who had attended at the rental unit, of what they alleged was marijuana. If the landlord felt they had sufficient evidence of illegal activity, it would be reasonable for them to take action by contacting

the police. Given that the landlord did not take that action, I can only determine that the landlord did not consider the evidence or circumstances sufficient to report to the police as illegal activity. Therefore, I find that the reasons selected related to illegal activity are not applicable to this matter based on insufficient evidence submitted by the landlord to support ending the tenancy for these reasons.

Extraordinary Damage

The landlord did not provide any testimony or submit any receipts into evidence in support of a claim that the tenant has caused extraordinary damage. Therefore, I find that there has been insufficient evidence submitted by the landlord to support ending the tenancy for this reason.

Giving False Information to Prospective Tenant or Purchaser

The landlord did not submit any evidence to contradict the statements made by the tenant regarding the status of the basement rental unit. Therefore, I find that there has been insufficient evidence submitted by the landlord to support ending the tenancy for this reason.

Breach of Material Term of Tenancy Agreement

The only recognized cause for ending a tenancy with a one month notice for breach of a term of the tenancy is if the breached term is a “material” term of the tenancy agreement.

A material term is defined in the Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms, as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. The Policy Guideline provides further direction on the required criteria to end a tenancy for breach of a material term. It is important to note that all of the following criteria must be met by the party alleging the breach of the material term:

> *To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*
> - *that there is a problem;*
> - *that they believe the problem is a breach of a material term of the tenancy agreement;*

- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

In this matter, the landlord listed a variety of issues but failed to specify on the One Month Notice, in the "Details of Cause" section which material term the tenant breached. The landlord's testimony and documentary evidence referenced issues between the tenant and the neighbours regarding garbage and recycling.

The landlord provided the tenant with a letter dated March 22, 2018 requesting him to ensure appropriate separation of garbage and recycling and to stop changing oil on the property. However, this written notice does not meet all the required criteria, as explained and set out above, for sufficient notice of a breach of a material term. Further to this, the landlord testified that they believed the previous downstairs occupant had been responsible for the garbage and recycling issues, and the letter was sent to the tenant prior to the downstairs occupant moving out. The tenant testified that there was a problem with the amount of garbage due to the number of occupants in the multi-unit rental property. He also stated that an additional amount of garbage was generated when the previous downstairs occupant moved out.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities I find that the landlord failed to fulfill all the criteria required for ending a tenancy due to a breach of a material term. As such, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause based on this reason.

Significantly Interfered/Unreasonably Disturbed, Seriously Jeopardized Health/Safety/Lawful Right, Put Property at Significant Risk

The landlord did not provide any testimony or evidence to indicate that any fines have been incurred due to the garbage/recycling issue. The photo submitted into documentary evidence by the landlord shows a garbage bin with a large garbage bag sticking out at the top so that the lid cannot close. Although this is problematic, the photo does not provide sufficient evidence to indicate this was an ongoing issue or that this was the cause of any rodent issues in the area.

The landlord also claimed that the tenant's lack of upkeep of the rental property had monetary consequences affecting the sale of the house and the rental of the downstairs

unit, although the landlord's written statement noted that they were not pursuing the tenant for these losses. The letter from the real estate agent submitted into evidence by the landlord noted that a bowl of vomit was found in the "downstairs unit". As the tenant resides upstairs, and at the time the previous downstairs occupant still resided in the downstairs unit, I do not find that the landlord has provided any evidence to prove that the tenant was responsible for that issue.

The landlord was very forthcoming about their efforts to sell the property, and in their own documentary evidence referenced that they "held multiple open houses" of the rental property. The tenant testified that he had been accommodating of the many requests by the landlord for access to the rental unit for open houses or showings for the purposes of selling the rental unit, and the landlord did not dispute this testimony.

The landlord failed to provide any evidence to disprove the tenant's claim that there had never been a battery installed in the smoke detector prior to the landlord attending the rental unit in early May 2018 to install the battery. There is now clear testimony from both parties that a battery was installed in the smoke detector in May 2018. **Therefore, the tenant is put on notice that any tampering with the smoke detector is a serious concern that would jeopardize the health, safety and lawful right of the other occupants of the residential property and the landlord.**

The landlord is also put on notice that the landlord's efforts to sell the rental property do no create grounds for ending the tenancy. The *Act* provides very specific requirements to be met if ending a tenancy for landlord's use of property. Should the landlord require assistance regarding the residential tenancy legislation, policies and rules, they may contact the Residential Tenancy Branch to speak with an Information Officer or visit the Branch's website.

In summary, based on the testimonies of both parties and the evidence before me, and on a balance of probabilities, I do not find that the landlord has proven the reasons for ending this tenancy as cited on the One Month Notice.

As such, I find that the tenancy shall continue until it is ended in accordance with the *Act*.

As the tenant was successful in his application, he may, pursuant to section 72 of the *Act*, recover the $100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold $100.00 from a future rent payment on one occasion.

Conclusion

The tenant was successful in his application to dispute the landlord's notice to end the tenancy. Therefore, this tenancy shall continue until it is ended in accordance with the *Act*.

I order the tenant to withhold $100.00 from a future rent payment on one occasion in satisfaction of the recovery of the filing fee for this application.

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: July 26, 2018

Residential Tenancy Branch