



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding ESTO HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, MNDCT, FFT

Introduction

On May 4, 2017, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 9, 2018, the Tenant submitted an Amendment to an Application for Dispute Resolution seeking to cancel a second Notice pursuant to Section 47 of the *Act* and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The original hearing was scheduled for June 1, 2018 at 9:30 AM but was subsequently adjourned to July 27, 2018 at 9:30 AM due to service issues of the Tenant's Amendment to her Application and her evidence.

The Tenant attended the adjourned hearing with D.G. as her agent and J.G. as her advocate. C.N. attended the hearing as an agent on behalf of the Landlord. All parties provided a solemn affirmation.

D.G. confirmed that the Landlord was served the adjourned Notice of Hearing package as well as their Amendment and evidence by registered mail on June 11, 2018 and C.N. confirmed receipt of this package. As such, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package, Amendment, and evidence. C.N. advised that their evidence was posted to the Tenant's door on June 13, 2018 and the Tenant confirmed receipt of this evidence. As such, I have accepted the evidence and have considered all the evidence provided when rendering this decision.

Regarding the Amendment, as I am satisfied that the Landlord was served with the Notice of Hearing package, Amendment, and evidence, I accepted the Amendment, I allowed the hearing to continue, and I considered the issues raised by the Tenant. At the outset of the hearing, J.G. advised that the Tenant would no longer be seeking the monetary compensation that was originally requested in the Amendment. As such, I advised the Tenant that this hearing would address the Notices, that her claim for compensation would be dismissed, and that the Tenant is at liberty to apply for this claim under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notices cancelled?
- If the Tenant is unsuccessful in cancelling the Notices, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

C.N. advised that the tenancy started on November 1, 2010. Rent is currently \$1,020.00 per month, due on the first day of each month. A security deposit of \$497.50 was paid at the start of the tenancy. The Tenant confirmed these details.

C.N. submitted that a first Notice was served to the Tenant on April 30, 2018 and the reason the Landlord served the Notice is because the “Tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord”. The Notice had an effective vacancy date of May 31, 2018. On May 4, 2018, the Tenant disputed the first Notice.

C.N. advised that on May 9, 2018, a letter was issued to the Tenant stating that the above Notice was issued in error, that this Notice would be withdrawn, and that a subsequent, corrected Notice would be served. She stated that a second Notice was served to the Tenant by being posted on the door on May 9, 2018 along with the aforementioned letter.

The reasons the Landlord served the second Notice are 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, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, [and/or] put the landlord’s property at significant risk.” This second Notice had an effective vacancy date of June 30, 2018. On May 9, 2018, the Tenant submitted an Amendment to her Application seeking to dispute the second Notice and seeking compensation in the amount of \$21,000.00 “for a long period of hardship (Pain and suffering)”.

To justify the reasons why the second Notice was served, C.N. submitted that the Tenant is significantly targeting the building manager, she corners the live-in caretakers, and she constantly interferes with the caretakers in the office. She advised that it appears as if the Tenant wants a “social life” with the caretakers.

She submitted that due to the Tenant's allegations that the building manager is sexually harassing her, he always has to be accompanied by another employee, so the company has to pay a second employee as well now. She stated that after the first hearing, the Tenant called the police to file her complaints about the building manager. She advised that a police officer attended and opened a file number, but could not find any issues supporting claims of sexual harassment; however, the Tenant was advised not to contact the caretakers unless it was to pay the rent. She advised that the caretakers have been in the building for 10 years and there have been no incidents reported in that time.

She then stated that the Tenant yells and screams in her apartment, she screams at people, she disturbs other neighbours, and she kicks doors. She also stated that the Tenant blames others for the mail not being delivered and she screamed at the caretakers. C.N. stated that the Tenant does not have any concrete evidence of her allegations of the building manager's behaviour.

She stated that he lives on the same floor as the Tenant, which accounts for how frequently he is near the Tenant's rental unit. This proximity also explains why the building manager appears to be near the Tenant's rental unit frequently; however, she refutes the Tenant's assertions that the manager is listening at her door or intentionally shaking his keys as he walks past the rental unit.

The Tenant advised that she has lived in the building for eight years and has not had a complaint against her in that time. She stated that the building manager has sexually harassed her. She submitted that since October 2017 to April 2018, this man has appeared in front of her door, has asked her out for coffee or a drink, and he appears when she enters and exits the rental unit.

She stated that in one instance, the building manager shared with her some personal and inappropriate information about his life. On another occasion on April 24, 2018, she was returning to the rental unit and the building manager appeared. She panicked and asked him why he was following her and he proceeded to grab her hand and then assault her.

She stated that he then made phone calls to his son and wife who appeared at the scene and made her cry. She testified that she had brought up the building manager's behaviour to his wife many times already. They advised her that she would be evicted and it is her belief that she received the Notice because she is "protesting his inhuman behaviour (constant sexual harassment)". She told them that she had done nothing wrong and that she was defending herself from their bullying and harassment.

It was at this point during the hearing that J.G. stated that she could not properly represent the Tenant because she had heard testimony from the Tenant that she had not been informed of previously, and in light of this information, she was no longer comfortable representing the Tenant. She then removed herself from the hearing by disconnecting herself from the phone system.

D.G. submitted that the only incident between the Tenant and the building manager happened on April 24, 2018 and there were no single incidents before then. However, since then, the harassment has been constant. He also stated that the Tenant had met independently with J.G. but that he had never met her. He speculated that the Tenant's difficulty with English was the reason that J.G. had not been informed of the issues that the Tenant testified to earlier.

The Tenant stated that she is scared of the building manager and that his family conspired to give her the Notice. She refuted that she yelled or screamed or that she went to the office to confront the caretakers.

She advised that she is a lonely woman and she only screamed when she asked the building manager to leave her alone. She stated that the building manager's wife was aware of the sexual harassment. She also advised that she never kicked the door and she is not physically imposing enough to be able to assault a person or kick a door.

D.G. submitted that the Tenant asked for a copy of the police report and they would not provide it to her but advised her to make a freedom of information request to obtain a copy. He stated that he received an email from the attending officer and he read from it. He indicated that the officer stated in his email that he was contacted by an "Adjudicator" from the Residential Tenancy Branch regarding this incident.

C.N. submitted that the building manager did not grab the Tenant as alleged, and there was distance between them so there was no physical confrontation. She advised that she is fearful for the safety of her caretaker. She also stated that he has never had any allegations of sexual harassment levied against him, nor has he had any situations with any other tenants of the building.

To support her arguments regarding the Tenant's behaviour, C.N. provided written evidence consisting of statements from the building manager, his wife, an employee of the landlord, another tenant of the building, and a contractor. She also provided a transcript of text messages between the Tenant and an on-site caretaker.

To support her arguments, the Tenant provided written submissions consisting of screen shots of text messages, a letter from a former tenant who confirmed hearing a conversation between the building manager and the Tenant that this former tenant determined to constitute sexual harassment, and a letter from a person that re-iterated what the Tenant had told her about her situation.

The parties discussed a potential settlement to this matter and C.N. advised that she would be agreeable to allow the Tenant to remain in the rental unit until September 30, 2018. D.G. countered this proposal and maintained that vacant possession on October 31, 2018 in addition to \$6,000.00 compensation would be fair.

Analysis

The first issue that must be considered is the Notice that was served to the Tenant on April 30, 2018. A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. In any event, both parties do agree that this Notice should be cancelled. As such, I order the Notice issued on April 30, 2018 should be cancelled and is of no force and effect.

With respect to the second Notice served to the Tenant on May 9, 2018, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this second Notice meets all of the requirements of Section 52.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(d) the tenant or a person permitted on the residential property by the tenant has:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) put the landlord's property at significant risk;*

When examining the submissions before me, the crux of the issue in this hearing is whether the Tenant's behaviour and actions were legitimate, and whether they warranted justification for the Notice. While the Tenant refutes the Landlord's assertions, I find it important to note that there are some key points below which cause me to doubt the credibility of the Tenant's position and testimony.

- 1) Early in the hearing after the Tenant provided some testimony as to the details of her allegations, J.G. felt compelled to interject and advise me that after hearing this testimony, she no longer felt comfortable representing the Tenant as she had not been provided any of this information. After J.G. recused herself from the hearing, the Tenant's agent (D.G.) stated that he had not met J.G. before and did not know what the Tenant and J.G. had discussed. He speculated that J.G. was likely unaware of these issues due to the Tenant's difficulty with the English language. However, if the Tenant had difficulty communicating with a person that she is seeking help from, I do not find it likely that the Tenant would have simply sought assistance without presenting any documentation. I find this suggestion even more unlikely given that the Tenant had submitted evidence for this file and had been in possession of it.

Moreover, J.G. was clearly aware that a monetary claim was no longer being pursued, so if she was approached by the Tenant for assistance and she was not aware of the testimony that the Tenant presented at the hearing, I find that J.G. would have been informed of some other information in order for her to necessitate her presence and justify her attendance at the hearing.

Based on J.G.'s reaction after hearing this portion of the Tenant's testimony, it appears that she was not previously aware of what the Tenant had just testified to and was more likely than not given some other information that she was comfortable representing the Tenant on. Given J.G.'s comments and that she so expediently exited the hearing after the Tenant's testimony, I find that this causes me to question the credibility and truthfulness of the Tenant's allegations on the whole.

- 2) The Tenant stated that she advised the wife of the alleged incidents of sexual harassment via text. The evidence provided is that text messages were exchanged in October 2017. Although, as per those texts, it is not evident that there is any specific mention of instances of sexual harassment. The Tenant stated that the reason she was given the notice was because she was "protesting his inhuman behaviour (constant sexual harassment)." However, if this

were true, it is not clear why she did not receive this Notice in October of 2017 when she first allegedly brought up this issue. This causes me to doubt that the Notice was served due to the Tenant's claims of sexual harassment. Rather, I find it more likely than not that the Notice was served due to the behaviour and outbursts that the Tenant exhibited, as documented by the Landlord.

- 3) The most pertinent evidence before me that causes me to doubt the legitimacy of the Tenant's assertions is that a police officer conducted an investigation into this matter and there is no evidence submitted before me that any instances of sexual harassment were discovered or documented. I find that this further supports the contention that the Tenant's actions were more likely than not disruptive rather than substantiated.

When reviewing the totality of the evidence, I find that the doubts created by the above points detract from the credibility of the Tenant's testimony, and this causes me to place more weight on the reliability of the Landlord's evidence. On a balance of probabilities, I find the Landlord's evidence more consistent and persuasive on the whole. Ultimately, I am satisfied of the Landlord's evidence that the Tenant's behaviour was more likely than not depicted as such. In addition to these behaviours, I find that the seriousness of the unsupported assertions levied against the building manager constitute a significant interference or unreasonable disturbance that warrants the issuance of the second Notice. For the above reasons, I dismiss the Tenant's Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession that takes effect at **1:00 p.m. on August 31, 2018** pursuant to Section 55 of the *Act*.

Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution in its entirety, and I uphold the second Notice served on May 9, 2018.

I grant an Order of Possession to the Landlord effective at **1:00 PM on August 31, 2018** after service of this Order on the Tenant. This order must be served on the Tenant by the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 17, 2018

Residential Tenancy Branch