Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On May 24, 2018, 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*").

On May 24, 2018, the Tenant submitted an Amendment to an Application for Dispute Resolution to clarify the full Landlord name in the Respondent field.

On June 20, 2018, the original hearing was re-scheduled to be heard on August 16, 2018 as both parties had agreed to accommodate a later hearing date.

The Tenant attended the hearing. D.D. attended the hearing as counsel for the Landlord while J.M. and M.P. appeared as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that the Landlord was served the Notice of Hearing package by registered mail but was not sure when. M.P. confirmed receipt of this package in early June 2018. While the Rules of Procedure require that the Notice of Hearing package be served within three days of being ready, I am satisfied that if the Tenant did not comply with this rule, this was not prejudicial to the Landlord as they still had ample time to prepare for the hearing. 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.

During the hearing, the Tenant stated that he did not serve the Landlord with his evidence; however, this evidence consisted of documents that the Landlord was already in possession of. It was also confirmed during the hearing that the Tenant had been served with the Landlord's evidence within the parameters of the Rules of Procedure

and the Tenant confirmed receipt of this evidence. As such, I have considered all the evidence provided when rendering this decision.

Regarding the Amendment, the Tenant confirmed that he originally wrote the acronyms for the Landlord name and then subsequently amended his Application to reflect the full name of the Landlord. However, he stated that he did not serve the Landlord with the Amendment. As I confirmed the details of the Amendment and reviewed them with all parties, D.D. was agreeable to continuing the hearing in the absence of being physically in possession of the Amendment. As such, I accepted the Amendment and I allowed the hearing to continue.

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 Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

All parties agreed that the tenancy started on December 1, 2014 and that rent is currently $503.00 per month due on the first day of each month. A security deposit of $255.50 was also paid.

All parties agreed that the Notice was served to the Tenant by being posted on his door on May 17, 2018 and the Tenant confirmed that he received the Notice. The reasons the Landlord served the Notice are because a “Tenant or a person permitted on the

property by the tenant has: put the landlord's property at significant risk" and a "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 [and] adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant." The Landlord also wrote in the effective vacancy date of the Notice as June 30, 2018.

D.D. referred to their written submissions and outlined the standard terms of the tenancy agreement. He cited incidents early on in the tenancy where the Tenant was given written warnings regarding his behaviours that breached the agreement; however, the Landlord chose not to issue a Notice in those instances. To illustrate a history of the Tenant's pattern of behaviours, he cited further warning letters dated September 28, 2017 and October 20, 2017, and referred to subsequent instances which led to incident reports being issued to the Tenant.

With respect to why the Notice was served, D.D. referred to an incident report documenting that on May 15, 2018, the Tenant was observed on security camera footage vandalizing encasements of hallway air conditioners and blocking open fire doors on the second floor. He stated that the cost to repair the air conditioning units totalled $1,000.00, that the Landlord absorbed, and that the fire doors need to remain closed due to safety and security reasons. He also added that the Tenant broke the fall restraint devices on the windows in his rental unit, which creates a safety hazard. D.D. then submitted that the Tenant's behaviour continued after the Notice was served and referenced an incident report regarding events on June 18, 2018. Again, the Tenant was captured on camera writing derogatory comments on a white board and on the gyprock in permanent marker. In one other instance, D.D. advised that an employee of the Landlord was making repairs in the building and the Tenant approached and stated words to the effect that it did not matter what the Landlord did to rectify the problems in the building as he would still sabotage those efforts.

The Tenant spoke to the incidents in the past and provided his justification for his actions. The Tenant and Landlord disputed many facts with respect to these issues. However, with respect to the issues brought forward under the Notice, the Tenant acknowledged that he did damage the air conditioning units in the hallways, although "superficially" and he refutes that it cost $1,000.00 to repair. He stated that he simply turned on the air conditioning units as it was very hot that day, he questioned why he had to ask the Landlord to turn these on when the conditions required them to be operating, he stated that several other tenants have requested that the air conditioning units be turned on, he made disparaging comments about the Landlord, and he expressed his dissatisfaction with how the Landlord was managing the property. He

stated that the communal area is a large space and the air conditioning units in that area are insufficient and thus, operating inefficiently. As well, he added that the air conditioning unit in his rental unit must work harder due to the lack of proper air conditioning in the communal area.

The Tenant also acknowledged that he did write on the whiteboard and on the gyprock in permanent marker, but he justified his actions as his way of advising the Landlord that he was displeased with how he felt the Landlord was managing the property. It is his belief that the Landlord's lack of action is detrimental to the health and safety of the residents. He advised that he subsequently rectified this situation by washing off the graffiti himself; however, the Landlord alleges that an employee had fixed this problem.

The Tenant confirmed that he did prop open the fire doors but did so because he smelled the odour of a dead body in the building for one week and that it was not safe to breathe in the "pathogens" emanating from this dead body. He stated that he informed the Landlord of this smell; however, the Landlord advised that they did not smell a dead body. J.M. confirmed that the odour of a dead body was eventually detected, that police were subsequently called, and that the body was removed after three or four days. She stated that the unit that contained the body was far away from the Tenant's unit and she disputed that the Tenant advised them of this odour.

The Tenant also acknowledged that he damaged the fall restraint devices on the windows; however, he stated that it is very hot in his rental unit and that many of the other tenants have done the same thing.

Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

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;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

When examining the submissions before me, the crux of the issue in this hearing was whether the Tenant's behaviour and actions were legitimate and whether they warranted justification for the Notice. Based on the evidence, it appears that the Landlord has had many issues with this tenancy and has taken documented steps to attempt to rectify issues with the Tenant in the past. While the Tenant refutes some details of the incidents not relevant to the issuance of the Notice, the Tenant acknowledges that he was responsible for the issues raised by the Landlord and for damaging the Landlord's property. While the Tenant expressed his frustration at how he believed the Landlord was not operating the residence in a manner that he considered acceptable, he admitted that his actions were his method of demonstrating his discontent at their inactions. However, I do not accept that the intentional damaging of the Landlord's property is an appropriate solution to his dissatisfaction. It is evident to me that the Tenant has demonstrated a consistent pattern of behaviour that is significant, disruptive, and unacceptable and has thus jeopardized the tenancy. As such, I am satisfied that the undisputed evidence of the Tenant's actions provides a basis and justification for the Landlord ending this tenancy. For these reasons, I dismiss the Tenant's Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession. As the Tenant has paid rent in full for August 2018, the Order of Possession takes effect at **1:00 p.m. on August 31, 2018**, pursuant to Section 55 of the *Act*.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. 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. 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