Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNDCT, OLC (tenant); OPC, MNDCL-S, FFL (landlord)

Introduction

This hearing dealt with an application by the tenant under the Residential Tenancy Act (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") under section 47 of the *Act*;
- An order for the landlord to comply with the Act, regulation and/or the tenancy agreement under section 62.

On July 30, 2018, the tenant filed an Amendment to her Application for Dispute Resolution to add an application for the following:

- A monetary order for damages or compensation under section 67.

On August 2, 2018, the tenant filed an Amendment to her Application for Dispute Resolution to add an application for the following:

- An order to suspend or restriction the landlord's right to enter under section 70.

This hearing also dealt with a cross application by the landlord for the following:

- A monetary order for compensation and damages under section 67;
- An order applying the security deposit held by the landlord to a monetary order for damages under section 72;

- An Order for possession pursuant to a One Month Notice under section 47;
- Reimbursement of the filing fee under section 72;

Both parties attended the hearing and were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. The tenant raised no issues of service.

The tenant testified she served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on June 29, 2018. The landlord acknowledged receipt although she was not sure of the date. The tenant provided the Canada Post tracking numbers in support of service. In the absence of any confirmation from the landlord as to the date received, I find the landlord was deemed served on July 4, 2018 pursuant to section 90 of the *Act*.

The landlord acknowledged she was personally served with the Notices of Amendment dated July 30, 2018 and August 2, 2018.

The landlord raised no issues of service except for the date of service of the Notice of Hearing and Application for Dispute Resolution.

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*") states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Because of the number of claims and counterclaims, the considerable volume of evidence submitted by the parties, and the limited time for the hearing, I decided to hear only the matter relating to the tenant's application to cancel the One Month Notice and the landlord's application for an order of possession.

I find that the following claims of the tenant are not related to the tenant's application to cancel the One Month Notice and the landlord's application for an order of possession and are therefore dismissed with leave to reapply:

- An order for the landlord to comply with the Act, regulation and/or the tenancy agreement under section 62;
- A monetary order for damages or compensation under section 67;

- An Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*.

I find the following claims of the landlord are not related to the landlord's application for an order of possession and are therefore dismissed with leave to reapply:

- A monetary order for compensation and damages under section 67;
- An order applying the security deposit held by the landlord to a monetary order for damages under section 72.

Section 55 of the *Act* requires, 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 in compliance with the *Act*.

The parties have an acrimonious relationship characterized by mutual accusations. Each party has called the police to complain about the other. In a lengthy hearing, I cautioned each party not to interrupt the other. I asked the tenant to lower the volume of her voice, and to remain civil.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice, under section 49 of the *Act*?
2. If the tenant's application is dismissed or the landlord's application is granted, is the landlord entitled to an order of possession, under section 55 of the *Act*?
3. Is the landlord entitled to reimbursement of the filing fee under section 72;

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The parties submitted substantial evidence, the index being five pages. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The parties provided testimony that the tenancy began on August 1, 2014. The current tenancy agreement between the parties is a one-year fixed term agreement with an end date July 31, 2018 at which time the agreement provides the tenant must move out of the residential unit.

A copy of the agreement was submitted as evidence. The landlord submitted copies of correspondence with the tenant in which she, the landlord, demanded that the tenant vacate the unit. The tenant refused to do so, stating there are no available rental accommodations and she wants to remain in the unit until her son finishes high school in 2019.

The present monthly rent is $1,555.00 payable on the first of the month. The tenant testified she paid a security deposit of $777.50 at the start of the tenancy. The tenant is not in arrears.

The landlord served the tenant with the One Month Notice on June 26, 2018 by posting it to her door. A copy of the One Month Notice was submitted in evidence. The section of the Notice for the effective date is not filled out. The Notice states:

- 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.
    - Put the landlord's property at significant risk.
- 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 the other occupant
    - Jeopardize a lawful right or interest of another occupant or the landlord.

The parties testified they have separate units in one house and the only electrical panel for the building is in the tenant's rental unit. The landlord claimed a warm and cordial relationship with the tenant until she raised the tenant's rent a year ago, after three years of the tenancy.

The parties agreed the tenant brought a personal injury action against the landlord with respect to an alleged fall outside the rental unit on April 10, 2018 which has caused further friction.

The landlord testified the relationship has become increasingly strained after the tenant alleged she fell on April 10, 2018. The landlord described hostile actions and words directed towards her from the tenant causing the landlord to fear for her personal safety.

She claims the tenant was increasingly confrontational, aggressive and vengeful. The landlord testified the tenant “put her fist in my face” and swore at her. The landlord claims the tenant is disrupting electricity to her unit as a campaign of vengeance and “getting back at her [the landlord]”.

The parties agreed the electricity was disrupted to the landlord’s premises on four occasions, April 25, May 28, June 3 and July 4, 2018, when the breaker was tripped, that is, the electrical flow was interrupted to the landlord’s premises.

After the first incident on April 25, 2018, the landlord issued a One Month Notice. The tenant applied to cancel the Notice and the matter was heard by an Arbitrator resulting in a decision on June 22, 2018, referenced on the first page of this decision. The Arbitrator considered only the April 25, 2018 outage and cancelled the One Month Notice.

The landlord issued a new One Month Notice on June 26, 2018 and relies upon the outages of May 28 and June 3, 2018 which occurred prior to the issuance of the new Notice and the incident of July 4, 2018 which occurred after the new Notice was issued.

The tenant disputed the landlord’s evidence that she had acted in a hostile or unreasonable manner. She vehemently denies she caused the outages. The tenant testified that she, the tenant, was the victim of harassment from the landlord. She claimed that she is a single mother trying her best to cope with an overbearing landlord who will not fix the electricity in the house.

The tenant testified she had no idea why the breaker tripped on the four occasions and denied manipulating the panel or electrical system in any way. The tenant claimed the landlord is fabricating claims against her in order to evict her and re-rent the unit at a higher price to a new tenant.

The landlord testified the City of Burnaby inspected and certified the electrical panel in the unit on March 1, 2016. She submitted considerable evidence of efforts to get to the bottom of the tenant's claim that the outages were caused by deficiencies in the system, and not by the tenant herself.

The landlord submitted letters from her son who she testified, is an electrician. In these letters, the landlord's son confirmed the outages took place. He states he conducted inspections on May 19, June 3, and July 5, 2018. In summary, the landlord's son stated he inspected the breaker panel and the electrical system in the house, including the tenant's unit. He stated there was nothing wrong with the electrical system in the house. He concluded the only possible causation was interference by the tenant.

The landlord testified to the following timeline and submitted letters from her son which are quoted in part as they are pertinent to the chronology:

- There was an outage in the landlord's unit on April 25, 2018, an incident which is not included in the One Month Notice but was the subject of a previous Arbitrator's decision;
- On May 19, 2018, the landlord's son conducted an inspection of the electrical system in the rental unit and states in part in a letter of June 3, 2018:

> *I inspected Breaker Panel box, breakers, upstairs washroom fans, plus inside and outside of the house, electric lawnmower, electric grass trimmer, electrical extension cords, deep freezer. [Relatives] and my mom were helping me to test everything upstairs and outside. Everything is in good working order. There was no faulty Breaker Panel box, breakers, washroom, fans, plus inside and outside of the house,[…] Everything was working before, and everything works now.*
> [as written]

- On May 28, 2018, another outage occurred in the landlord's unit;
- On May 29, 2018, the landlord reported the incident to the RCMP and submitted a copy of the incident report stating the police attended but the tenant did not come to the door;
- On June 3, 2018, the landlord, the landlord's son and another electrician went to the tenant's unit; the tenant permitted only the landlord and the landlord's son to enter the unit;
- During the inspection, the breaker was tripped and the electricity to the landlord's premises were interrupted;

- In his submitted letter of June 3, 2018, the landlord's son states in part:

> *June 3, 2018 I did 2nd Electrical Breaker Panel box and the Breakers Inspection in tenant's bedroom because we did not have an electricity on May 28, 2018. Tenant's x-husband and her son were both videotaping us from the beginning since she opened the door for us to do an Electrical Inspection*.
>
> *Electrician [name] came with me to do an inspection and tenant would not allow an Electrician [name] in her suite. She argued with us that he can not come in because my mom put in her 24 hour notice "Electrical Inspector", and not "Electrical Inspectors". […]*
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> *The breaker #3 trip 5-6 times while I was inspecting the Electrical Breakers inside the tenant's bedroom. … Tenant purposely staged and overloaded the breaker #3 while was inspecting Electrical Panel Box. My mom and I saw that the tenant plugged so many electrical extension cords and appliances all on one plug in the kitchen. That is the reason that the tenant got so upset, threatened and swore at my mom because my mom saw and at the same time interrupted the tenant purposely setting up an overload of the breaker #3.*
>
> [as written]

- On July 4, 2018, another outage occurred in which the supply of electricity to the landlord's unit was stopped;
- The landlord submitted copies of many letters to the tenant starting on April 25, 2018, warning her to stop interfering with the electricity;
- In one such letter dated July 30, 2018 from the landlord to the tenant, a copy of which was submitted in evidence, the landlord states:

> *I [landlord] am giving you 24 hour notice to have access to your suite [address and time] with the reason.*
>
> *We never had any problems with electrical breakers of electricity in 18 years that we are living here until you deliberately started turning off or overloading the electrical breakers on April 25, 2018…*
>
> *I had to install a cover door with the [lock] on the electrical panel box on June 18, 2018 because you are deliberately turning off or overloading the*

electrical breakers. Because of you tempering with the electrical breakers I did not have electricity in some parts of my house again on July 4, 2018.

This is the fourth time that you are deliberately tampering with the electrical breakers that are in your bedroom and only you have access to electrical panel box.

Electrician and/or electricians and helpers has to find out why and how.

[as written]

- On August 2, 2018, the landlord attended with an electrician at the unit and a police officer after providing the tenant with notice. The landlord submitted a copy of a report from the Burnaby RCMP confirming an officer attended on that day with the landlord in the presence of the electrician but could not enter the unit as the tenant did not respond to knocking on the door.
- The landlord's son states in part in a written submission:

August 2, 2018 an Electrician from [name] came to inspect the Electrical Panel Box. [tenant] refused to open the door and prevent an Electrician to do an Inspection. My mom called the Police, and [tenant] would not [answer] her telephone or open the door to the Police. [as written]

- The landlord submitted an invoice from the electrical company that attended on August 2, 2018 for $200.00 which stated, "I'm trying to investigate some of the breakers in the house [address] on the first floor but we did not have access to the house."

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Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim already conclusively decided.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the same parties are involved.

In the earlier decision, the other Arbitrator considered only the April 25, 2018 incident and granted an order cancelling the One Month Notice.

In this hearing, I therefore did not permit the parties to enter evidence with respect to the April 25, 2018 outage as there was an earlier decision on the issue, a final decision had been made, no review or appeal had been filed, and the same parties are involved.

I find the tenant was served with the One Month Notice on June 29, 2018. Section 47 of the *Act* provides that upon receipt of a One Month Notice, the tenant may, within ten 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, on a balance of probabilities, the grounds for the One Month Notice.

The tenant filed an Application for Dispute Resolution on June 29, 2018 within the ten-day period.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the One Month Notice.

In the matter at hand, the landlord must demonstrate that 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, 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 the other occupant, or jeopardize a lawful right or interest of another occupant or the landlord.

The submitted evidence and documentary material points to repeated warnings to the tenant not to disrupt electricity to the landlord's unit. The evidence shows the tenant's repeated denial of responsibility for the outages in the face of clear evidence there was nothing wrong with the electrical system.

The landlord has submitted documentary evidence showing the situation was investigated by landlord's son, as evidenced in his written statements, and an effort was made to have an independent electrician inspect the system, who was disallowed by the tenant. No deficiencies in the electrical system were found after prudent and complete inspections. I conclude the tenant is the likely source of the interruption of electricity to the landlord's unit by either tripping the breakers or deliberately overloading the electrical system.

I find the landlord has met the burden of proof establishing on a balance of probabilities that tenant has engaged in activities which have had a significant interference with the landlord. Considering all the evidence and the testimony, I find on a balance of probabilities that the landlord has established that the tenant has significantly interfered with and unreasonably disturbed the landlord as well as seriously jeopardized the lawful right of the landlord.

I therefore dismiss the tenants' request for an order setting aside the One Month Notice.

To be effective, the One Month Notice must comply with the provisions of section 52 of the *Act,* which states*:*

> **52** In order to be effective, a notice to end a tenancy must be in writing and must
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> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,
>
> **(c) state the effective date of the notice,**
>
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
>
> (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
>
> (e)when given by a landlord, be in the approved form.
>
> [emphasis added]

Section 68(1) provides an Arbitrator discretion to amend a Notice, stating:

> **68** (1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that
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> (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
>
> (b) in the circumstances, it is reasonable to amend the notice.

Considering all the evidence in this case, I find the tenant knew or ought to have known that the landlord was intending the One Month Notice to be effective at the end of the

following month, that is July 31, 2018. Therefore, I find it reasonable to amend the One Month Notice to include an effective date of July 31, 2018.

I find the One Month Notice as amended complies with section 52.

Pursuant to section 55(1), the director ***must*** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenant's application is dismissed. As both conditions are met, I therefore grant the landlord an order of possession.

As the landlord has been granted an order of possession, I award the landlord reimbursement of the filing fee in the amount of $100.00.

I grant the landlord a monetary order in the amount of $100.00. This order must be served on the tenant. If the tenant fails to comply with the Order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an Order of that Court.

Conclusion

I grant the landlord an order of possession which is effective two days after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: September 4, 2018

Residential Tenancy Branch