Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This dispute resolution proceeding was initiated by the tenants, who filed an application for dispute resolution on September 24, 2018 against the landlord. The tenants argue that the landlord issued a One Month Notice to End Tenancy for Cause (the "Notice") contrary to the *Residential Tenancy Act* (the "Act") and seek relief by way of an order cancelling the Notice, pursuant to section 47(4) of the Act.

I note that the tenants sought additional time to dispute the Notice pursuant to section 66(1) of the Act but that this issue was dismissed in my Interim Decision of November 6, 2018, having found that the tenants applied within the required time under the Act.

A hearing was first convened on November 6, 2018, which was adjourned to December 14, 2018 and again to December 19, 2018. The purpose of the first adjournment was to permit the parties to exchange and serve evidence. The tenants raised an issue with this service of evidence that I will address below as a preliminary matter.

The tenants, the landlord, and landlord's counsel attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony (the parties remained sworn from the previous hearing), to make submissions, and to call witnesses.

I note that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

Preliminary Issue: Request for Adjournment and Exchange of Evidence

The tenant (D.T.) explained that copies of the landlord's evidence was only served on her and not on the co-tenant (J.G.) and submitted that copies of the evidence must be served on both tenants, and that she requested an adjournment for the purpose of the evidence being served on both tenants.

Rule 3.16 of the *Rules of Procedure* states that a respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and the *Rules of Procedure.* In this case, this does not appear to have occurred.

However, Rule 9.1 of the *Rules of Procedure* states that failure to comply with the *Rules of Procedure* will not in itself stop or nullify a proceeding, a step taken, or any decision or order made in the proceeding.

In this case, the tenants live together and by all accounts are in frequent, if not daily, contact. Evidence served on one tenant would, for all practical purposes, be available to the other tenant, and given the gravity of the issues underlying this application I find it difficult to accept that the tenants would not have both reviewed this evidence. Further, I note that the entirety of the landlord's evidence consists of evidence that is, with the exception of a news article and copies of court records (which are public record), the same as the tenants' evidence.

Based on the above, I find that the tenants were served with the landlord's evidence pursuant to section 89(2)(e) of the Act, and I deny the tenants' request for an adjournment on the basis that evidence was properly served.

Issue to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. If they are not, is the landlord entitled to an order of possession?

Background and Evidence

The primary, or central theme of the landlord's argument is that the tenants are running a criminal enterprise on his property and that there is stolen goods on his property. His interests as a landlord have been compromised by the actions of the tenants.

The landlord described his property as that of a half-acre lot with a trailer and an accessory building, the property bordered on either side by half lots. On one side is a vacant forested lot, and on the other side is property with a residence.

At the time of or just prior to the tenancy commencing, the landlord showed the tenant the property lines. Also, at that time the landlord showed the tenant a 1/3 cord of logs that were on the property that the landlord said would later be turned into cedar boards. The landlord told the tenant that he, the tenant, could move the logs if he needed to.

I note that submitted into evidence is a copy of the written tenancy agreement, which indicates a fixed term tenancy commencing July 1, 2018 and ending on June 31, 2019. Monthly rent is $900.00, and the tenants paid a combined security and pet damage deposit of $450.00.

On September 15, 2018, the landlord visited the property which he found to be “in a state of disaster.” Two days later, the landlord sent a letter (a copy of which was submitted into evidence) to the tenants in which he advised them that they were not to run a commercial enterprise and to clean up various junk.

On September 18, 2018, the landlord issued and served the Notice (a copy of which was submitted into evidence) on the tenants with an effective end of tenancy date of October 21, 2018. The grounds on which the Notice was issued were as follows, and indicated as such on page 2 of the Notice: (1) the tenants have put the landlord’s property at significant risk; (2) the tenants have engaged in illegal activity that has, or is likely to, damage the landlord’s property and adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant; and, (3) the tenants have caused extraordinary damage to the property. The Details of Cause(s) section below that reads as follows (reproduced as written):

> “the property is being used to facilitate a commercial operation, cutting bucking splitting lots for the purpose of selling fire wood. the tennant has been asked to remove and clean the propery of JUNK. In the front back side yards Pictures are available. The inspection checklist is required to complete rental application.”

On September 29, the landlord’s neighbour (Mr. B.) advised him that the tenant had cut down a fir tree and removed logs, and that the tenant’s vehicle was sitting on the neighbour’s driveway. The neighbour called the police, who attended. The landlord estimates the value of the illegally chopped down wood to be in excess of $1,000.00.

The landlord alleges that the tenant has chopped down wood of both the landlord and that of the neighbour, has split the wood, stored the wood on the landlord's property, and has sold the wood on social media. All of which is, the landlord submits, an illegal activity putting his property at significant risk.

Landlord's counsel referred me to, and the landlord read into evidence, a copy of a text message in which the tenant admitted to accidentally cutting down the neighbour's tree and apologized to the neighbour for this action. The tenant attempted to make amends to the neighbour. The landlord testified that the tenant was well aware of the property lines from having been shown them at the start of the tenancy, and as such this was not a simple mistake.

I note that while tenant's counsel stated that a copy of this text message was submitted into evidence, I see no such documentary evidence submitted into evidence with the Residential Tenancy Branch file. However, my decision will not turn on this piece of evidence; the tenants did not dispute the content of this text message.

On October 16, 2018, the landlord noticed that the feeder logs (the ones that the landlord earlier told the tenant he could move) were missing. The tenant denied seeing the logs.

The landlord testified that another neighbour behind his property also alleged theft of logs or wood from that neighbour's property. He further testified that there are multiple police investigations occurring now, involving the parties. He reiterated that the tenants have been selling illegally obtained wood online.

There was additional testimony from the landlord regarding a gas fired clothes dryer that the tenants attempted to hook up, though ultimately unsuccessfully.

In his submissions, landlord's counsel argued that both tenants have length criminal records, which support the position and lend weight to the argument that the tenants are stealing wood and logs from both landlord's property and that of the neighbours. Submitted into evidence by the landlord were copies of court services printouts pertaining to both tenants. The second issue is that of the tenants' attempt to install the clothes dryer without the consent of the landlord; an improperly installed gas fired clothes dryer places the property at significant risk.

The tenant (J.G.) testified that the landlord told him that he, the tenant, was free to cut up the feeder logs and sell it. He stated that not once has he been charged with a criminal offense while on the rental property, and that he cleaned up the property within two days of the landlord giving him the letter asking him to do so. He notes that the only reason the police keep attending to the property is because the landlord keeps calling the police. Further, he notes that the landlord has posted the court services records up around the town and the island for the whole community to see. He further noted that the police investigated the neighbour's apparent log theft and determined that the logs were in fact not stolen.

The tenant (D.T.) testified that there is "zero damage to the property" and that the only photograph submitted was of a pile of logs that existed at, or just prior to, the start of the tenancy. She submitted that while she has a criminal record, it is unfair for this to be used against her, and, that she was never been charged with theft whilst living in the rental unit and on the island. Finally, she reiterated that there has been no damage to the landlord's property and no criminal activity undertaken.

In rebuttal, the landlord testified that he was previously unaware of the tenants' criminal past until it was brought to his attention by a third party.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The landlord submitted that the Notice was issued because the tenants breached sections 47(1)(d)(iii), 47(1)(e)(i) and (ii), and 47(1)(f) of the Act, which read as follows:

> 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 [. . .] (iii) put the landlord's property at significant risk;

> (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that (i) has caused or is likely to cause damage to the landlord's property, (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, [. . .]
>
> (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

In this case, the landlord's argument and submissions regarding the tenants' alleged criminal enterprise are not supported by any documentary evidence. While something untoward may or may not be occurring on the property, there is no evidence that the tenants have engaged in any activity that meets any of the above-noted grounds for ending the tenancy. This dispute involves two parties who agree on very little and disagree on the fundamental aspects concerning the grounds on which the Notice was issued. Indeed, the only instance in which the tenants appeared to have illegally cut down a tree involved the neighbour, and by all accounts this issue was a one-time incident. That is not to say that this can in any be condoned, or excused, but that this incident in my opinion does not give rise to a ground for ending the tenancy.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has not provided any additional evidence beyond his oral testimony that the tenants have, or are, engaged in a criminal enterprise that puts the landlord's property at significant risk, or any activity for that matter that meets any of the grounds on which the Notice was issued. There is no documentary evidence such as copies of the online postings that may have established the illegal sale of firewood, no written witness statements from the neighbours, no police file numbers, or anything else to substantiate the landlord's claim. Further, there was no documentary evidence involving the gas fired clothes dryer that establishes that the tenants tried installing it and thereby putting the property at significant risk.

As an arbitrator, one often brings their own experience to cases before them. My experience as a crown prosecutor in the early 2000s was such that an individual's criminal record does not in and of itself prove whether that individual is guilty of the crime with which he or she is charged. Indeed, a criminal record may be submitted in

court for the purposes of determining sentence, but not as evidence (except in very rare circumstances) to prove that individual's guilt in the commission of an offense. In my view, the submission of the tenants' court records is irrelevant, and does not in any way prove that the tenants are engaged in the activities being alleged.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the burden of proving on a balance of probabilities the grounds on which the Notice was based.

As such, I order that the One Month Notice to End Tenancy for Cause, dated September 18, 2018, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

I hereby order that the One Month Notice to End Tenancy for Cause, dated September 18, 2018, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 19, 2018

Residential Tenancy Branch