Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, AS, CNC, ERP, FFT, LAT, LRE, MNDCT, MNRT, OLC, OPT, PSF, RP, RR

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on November 15, 2018, as well as an amendment filed on December 7, 2018 in which the Tenants sought the following relief:

- an Order of Possession in favour of the Tenants;
- an Order allowing the Tenants and the Tenants' guests access to the rental unit;
- authorization to change the locks on the rental unit;
- authority to assign or sublet the tenancy;
- to cancel a notice to End Tenancy for Cause issued on November 26, 2018 (the "Notice");
- an order that the Landlord:
    - comply with the *Residential Tenancy Act* the *Residential Tenancy Regulation,* or the tenancy agreement;
    - make repairs to the rental unit, emergency or otherwise;
    - be restricted from entering the rental unit;
- monetary compensation in the amount of $24,150.00 for the cost of emergency repairs as well as monetary loss or money owed; and,
- recovery of the filing fee.

The hearing was scheduled for teleconference at 11:00 a.m. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Naming of the Landlord

The Tenant incorrectly named the property manager, D.L., as the Landlord. Pursuant to section 64(3)(c) I amend the Application to correctly name the Landlord.

Preliminary Matter—Identification of the Relevant parties

I have used the general terms “Landlord” and “Tenant” where possible. Additionally and for the purposes of clarity, I have also used the parties’ initials.

During the hearing the Tenant, J.C., requested that I refer to them as “Mrs.” and with the pronoun “she”, rather than “them”. Documentary evidence submitted by the Landlord indicates the Tenant, A.C, refers to J.C. as her husband and with the pronoun “he”. Similarly, in online reviews of J.C.’s tattooing services, the writers refer to J.C. as “he”.

For the purposes of this my Decision, I have referred to J.C. as “she” and “her” as requested by J.C. during the hearing.

Preliminary Matter—Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant’s request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenants’ other claims; accordingly I exercise my discretion and dismiss the balance of the Tenants’ claims with leave to reapply.

Preliminary Matter—Landlord’s Evidence

At the conclusion of th hearing the Tenant, J.C., claimed she did not receive the Landlord’s evidence package.

D.L. testified that on December 10, 2018 he personally served two thick paper envelopes containing all the Landlord’s evidence on the Tenant, J.C., at 5:30 p.m. He further stated that he personally handed J.C. both packages, one marked with J.C.’s name and one marked with A.C.’s. D.L. testified that in response, J.C. dropped the packaged marked “A.C.” on D.L.’s foot. When D.L. tried to move the package into the rental unit, J.C. picked it up and threw it across the yard and onto the street.

Once D.L. gave this testimony, J.C. then admited that she received the packages on December 10, 2018, but stated that she did not open it because it was “too late”.

Pursuant to *Rule 3.15* of the *Rules of Procedure* as the Respondent, the Landlord has 7 days from the date of the hearing in which to submit and serve their evidence. As the hearing was

scheduled for December 21, 2018, the Landlord served the Tenants 11 days prior to the hearing; consequently, I find that the Landlords' evidence was properly served on the Tenants and I therefore considered it in making this my Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

D.L. confirmed that according to the tenancy agreement this tenancy began January 1, 2017; although he noted that the Tenants received the keys on December 16, 2016.

The tenancy agreement was also provided in evidence. Pursuant to clause 9 of the Addendum the Tenants were prohibited from operating a business out of the rental unit.

D.L. testified that he personally served the Notice on the Tenants on November 26, 2018. A proof of service was also provided in evidence. The reasons cited on the Notice are as follows:

- the Tenant or a person permitted on the residential property by the Tenant has put the landlord's property at significant risk;

- the Tenant has engaged in illegal activity that has caused or is likely to jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and,

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

In the details of cause section, the Landlord provided the following additional information:

> "Tenant has installed unsafe stairs from balcony without permission and not removed when requested.
>
> Tenants are running 2 businesses from the house in contravention of city bylaws and addendum to residential tenancy agreement.,
>
> Tenant has jeopardized Owner's interest as Insurance company will not remain on risk while businesses are run from the unit.
>
> Tenant has not paid the RTB awarded $4000.00 Monetary Order issued July 24, 2018."

The effective date of the Notice is December 31, 2018.

D.L. testified that the issue with the Tenants operating a business out of the rental unit has been ongoing throughout their tenancy. He stated that they have a tattoo business and hair cutting business out of the rental unit contrary to the tenancy agreement, municipal bylaws, as well as the Landlord's insurance.

By letter dated September 21, 2018 the Landlord warned the Tenants that they were in breach of their tenancy agreement by operating the businesses from the rental unit as well as cutting a hole in the exterior wall and installing stairs without the Landlord's approval. A copy of this letter was provided in evidence.

D.L. stated that at times the Tenants have stopped and restarted their business such that even though they may presently claim not to be operating the businesses, it would only be a temporary situation to possibly avoid eviction, and as soon as this hearing concludes they will start again.

The Landlord submits that the Tenants are currently operating the businesses from the rental unit. In support the Landlord provided copies of text communication between a prospective client and the Tenants wherein a tattoo appointment was made at the rental unit in November of 2018. In the text communication, the Tenant, A.C., refers to the business as a "home based business" and indicates they have been operating out of their home for five years. When the prospective client requested the address, A.C. provided the address of the rental unit.

Also included in evidence were photos from social media sites showing the Tenant, J.C., performing tattoo services at the rental unit.

D.L. confirmed that they carry insurance on the rental property. On January 1, 2019 they renew the insurance which will not be possible at the current rate if the businesses continue to be operated on the property.

D.L. stated that the Landlord has a court date in January before the B.C. Provincial Court (Small Claims Division) to enforce the monetary order of $4,000.00.

I did not require submissions from the Landlord on the issue of the installation of stairs at the rental unit.

In response to the Landlord's submissions, J.C. stated that the position of the Tenants is that they do not operate a business out of the rental unit. She stated that she is an artist and she does not just do tattoos as she also does carvings. J.C. stated that she only does consultations at the rental unit. When I brought it to her attention that operating a tattoo business does not only include doing the actual tattoo, J.C., changed her testimony and stated that she does consults at coffee shops.

When I brought it to J.C. attention that this testimony was inconsistent with her prior testimony she then then claimed she suffered a concussion four days prior.

J.C. stated the other Tenant was not able to attend the hearing because she was watching the children. She then claimed that she was having trouble understanding my questions.

J.C. stated that she "hasn't worked for tattoos for a while". When I asked what that meant she responded that she hasn't been doing tattoos "since they got fines and it has stopped at the house".

J.C. claimed she stopped in September 2018, also claiming that her wife moved out at that time.

In reply D.L. noted that the text messages in evidence confirm that the meeting was set up for November 12, 2018 at their home. D.L. also stated that in the past the Tenants have been fined, ceased their business, only to restart.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities, I find as follows.

I find that the Tenants have operated, and continue to operate businesses out of the rental unit contrary to clause 9 of the tenancy agreement, municipal bylaws, and the Landlords' property insurance. I accept the Landlord's evidence that if the Tenants have currently "stopped" operating the business, which I do not find to be the case, this is temporary and merely to avoid eviction.

I am persuaded by D.L's testimony, as well as the evidence submitted by the Landlord, and in particular, the text messages between the Tenant, A.C., and a prospective tattoo client that the

Tenant J.C. continues to operate her tattooing business out of the rental unit. Notably, the Tenants describe the business as a home based business as well as providing the rental unit address as the location for the services.

I am also persuaded by the photos submitted by the Landlord that the Tenant uses the rental unit for consults as well as tattooing services.

During the hearing, J.C., initially stated that she did only did initial consults at the rental unit. She then changed her testimony when I brought it to her attention that such consults were part of operating a business. J.C. then testified that she hadn't been doing tattoos for a while and "it has stopped at the house". This testimony confirms the Landlord's allegation that the Tenant operated the tattoo business from the house

Where the evidence of the Landlord's agent and the Tenant, J.C., conflicts, I prefer the evidence of the Landlord's Agent, D.L. I found him to be forthright and consistent in his testimony. Conversely, I found J.C.'s testimony lacked credibility. As noted, at the conclusion of her testimony she alleged she did not receive the Landlord's evidence; when presented with a clear and detailed response from D.L. regarding service of those documents, J.C. changed her testimony and stated she did not accept them because they were late. As noted, she was also inconsistent in her testimony whether she operated the tattoo business from the rental unit.

The Tenant, J.C., suggested during the hearing that she was not able to understand my questions due to an alleged concussion. I found that she was able to present their evidence and respond to my questions without difficulty, and only raised the potential concussion as an explanation/excuse when her testimony was clearly not in their favour. As there are two Tenants, A.C. could have attended the hearing on their behalf if in fact J.C. was affected by the alleged concussion. I find it more likely J.C. raised this as an issue for strategic purposes, as immediately following the hearing she asked how she could appeal the Decision if it were not in their favour.

In all the circumstances, I find the Landlord has met the burden of proving the Notice and I therefore dismiss the Tenants' request for an order canceling the Notice. The Tenant shall end on December 31, 2018 pursuant to the effective date of the Notice.

Conclusion

The Tenants' claim for an order canceling the Notice is dismissed.

The Landlord is granted an Order of Possession effective 1:00 p.m. on December 31, 2018. This Order must be served on the Tenants and may be filed and enforced in the B.C. Supreme Court.

The balance of the Tenants' claims, as they remain relevant, are dismissed with leave to reapply.

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: December 24, 2018

Residential Tenancy Branch