Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNDL-S, MNRL-S, MNDCL-S, CNC, CNR, MNRT, MNDCT, ERP, RP, PSF, RPP, LRE, LAT, AAT and RR

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent based on the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued to the tenant pursuant to section 55;
- an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) issued to the tenant pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for losses or other money owed by the landlord under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33;

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed that on November 28, 2018, they received the landlord's 1 Month Notice posted on their door earlier that day by the landlord. The landlord read into the record the contents of an email the landlord sent the tenant at 10:36 p.m. on November 28, 2018, in which the landlord confirmed having posted the 1 Month Notice on the tenant's door earlier that day. The landlord also read into the record the contents of the tenant's 1:55 p.m. email response of November 29, 2018, in which the tenant confirmed that the tenant had received the landlord's 1 Month Notice at 11:00 p.m. on November 28, 2018. Although the landlord believed that they had submitted a copy of this email as part of their written evidence for this hearing, I was unable to locate this email exchange within the written evidence submitted by the landlord. However, the tenant did give sworn testimony confirming that the landlord's sworn testimony as to the content of the two emails noted above was accurate and that the tenant did receive the 1 Month Notice at 11:00 p.m. on November 28, 2018. On this basis, I find that the tenant was duly served with the landlord's 1 Month Notice in accordance with section 88 of the *Act* on November 28, 2018.

As the tenant admitted to having received the landlord's 10 Day Notice posted on the tenant's door by the landlord on December 9, 2018, but was unsure as to when this occurred, I find that the tenant was deemed to have received the landlord's 10 Day Notice on December 12, 2018, the third day after its posting, in accordance with sections 88 and 90 of the *Act.*

The tenant testified that they sent the landlord a copy of their dispute resolution hearing package, which included an amended application adding the cancellation of the landlord's 10 Day Notice and an application restricting the landlord's right to access the tenant's rental unit, by registered mail on December 13, 2018. Although the tenant

provided numbers which they maintained were Canada Post Tracking Numbers to confirm this registered mailing, the tenant's amendment did not occur until December 14, 2018. As the Canada Post Tracking Number did not match with the format usually employed by Canada Post, I checked Canada Post's Online Tracking System and found no match with the numbers entered into sworn testimony by the tenant. Although the landlord confirmed that they received some portions of the tenant's application, the landlord testified that this information was incomplete. The landlord testified that the hearing package contained only the tenant's application and photocopies of some of the tenant's evidence; it did not contain the call-in details for the hearing, or any of the other standard materials that are to be provided to Respondents in a dispute resolution hearing. Although I am concerned as to the extent to which the tenant has demonstrated service of their complete dispute resolution hearing package to the landlord, I accept that the landlord has been served to the extent required by the tenant with this package, as it did not appear that the landlord's ability to respond to the tenant's application was compromised by any lack of thoroughness of the hearing documents provided to the landlord. In accordance with paragraph 71(2)(c) of the *Act*, I find that even though the tenant's application may not have been served in accordance with section 89 of the *Act,* the documents have nevertheless been sufficiently served for the purposes of the *Act*.

The landlord testified that they served the tenant by leaving a copy of their dispute resolution hearing package in the tenant's mailbox on December 22, 2018. The tenant did not dispute the landlord's testimony in this regard and was aware that the landlord was seeking an Order of Possession. While I find that the landlord's application for an Order of Possession complied with the provisions of section 89(2) of the *Act,* this method of service delivery is not one that is allowed pursuant to section 89(1) of the *Act* for a monetary claim. For this reason, I dismiss the landlord's application for a monetary award with leave to reapply.

In making this determination, I have taken into consideration that a great deal of the landlord's original application for a monetary award of $17,600.00 was reduced at the hearing to an application for $11,800.00, the amount outlined in the landlord's Monetary Order Worksheet. Significant portions of the landlords' reduced request for a monetary award of $11,800.00 were for items that have either been paid by the tenant, as was the case of the $2,900.00 claim for unpaid rent for January 2019, were for items such as the claim for loss of the landlord's time and for the tenant's filing of "false claims" for which there is no recourse pursuant to the *Act*, or were premature, as the landlord confirmed that they have not incurred any new expenditures for a $2,800.00 double door fridge, $1,200.00 for an oven/range or $800.00 for a washing machine. In fact, it appeared that

the only portion of the landlord's claim that had any prospect for being allowed was the $2,900.00 in unpaid rent, which the landlord maintained remains owing for December 2018. The tenant testified that this amount was paid on December 1 or 2, 2018, and as part of the tenant's amendment application, supplied a copy of the bank draft for $2,900.00 issued to the landlord on December. However, given the timing of the tenant's provision of the dispute resolution package to the landlord and the landlord's admission that he had not reviewed all of the documents on the tenant's USB containing the tenant's evidence, it is possible that the parties may be able to sort out the dispute regarding whether rent was indeed paid by the tenant for December 2018, without the need for a hearing of this issue. At any rate, as the landlord did not serve their hearing package to the tenant in a way required by section 89(2) of the *Act* for this type of application, I dismiss the landlord's monetary claim with leave to reapply.

Both parties were uncertain as to whether they had received all of the other parties written evidence. The tenant said that their written evidence was provided to the landlord by way of a USB and that digital and paper evidence was supplied to the Residential Tenancy Branch (the RTB). The landlord eventually confirmed receipt of the tenant's evidence provided on the USB, including some video and audio evidence. The landlord testified that all of their written evidence was supplied to the tenant on December 22, with the dispute resolution hearing package. I accept that the relevant portions of the parties' written evidence was served in accordance with section 88 of the *Act*.

Preliminary Issue - Consideration of the Tenant's Evidence

In accordance with Rule 2.3 of the Residential Tenancy Branch's Rules of Procedure, I find that many of the issues raised by the tenant have either already been considered by previous arbitrators in the decisions identified above, or are not central or related to the primary issue of whether this tenancy is to continue. For this reason, I dismiss the tenant's application for a monetary award with leave to reapply.

At the hearing, the tenant testified that they attended the RTB Office and were advised that not all of their written evidence could be uploaded by RTB staff to a digital format. The tenant maintained that some of the tenant's evidence, which I could not locate in the digital record, had not been uploaded and that it remained in a paper file for this hearing. I advised the tenant that I would make enquiries to find out if any of the tenant's written evidence provided to the RTB for this hearing had not been uploaded by the RTB to the digital format that I could view. After the hearing, I confirmed that

everything the tenant had brought to the RTB for this hearing had been uploaded to the digital format which was available for my viewing.

RTB Rule of Procedure 3.7 grants me the discretion to not consider evidence that is not readily identifiable, organized, clear and legible. In this case, I find that the tenant failed to provide any type of organized breakdown of the somewhat massive submission of audio, video and written evidence supplied for this hearing. The tenant failed to provide a Monetary Order Worksheet to support the tenant's application for a monetary award of $4,400.00. When questioned about this deficiency, the tenant responded that everything was included in his submission, and made references to receipts, which were not part of the record of the tenant's written submissions. The tenant could only provide vague responses as to how they had arrived at the $4,400.00 monetary claim. The tenant testified that about $350.00 of this amount was to repair the dryer in the rental unit, $250.00 or $350.00 was to purchase a replacement oven, and $250.00 was for a replacement fridge. The only other monetary references I was able to locate in the tenant's application, which the tenant repeatedly cited when asked to quantify his claim were general references to $3,000.00 for losses or other money owed, and for $700 for repairs, services or facilities agreed upon but not provided.

Problems associated with the tenant's provision of evidence attracted the attention of the arbitrator who issued the December 6, 2018 decision for this tenancy identified above. That arbitrator made the following comments:

...Section 59 of the Act provides that an applicant must provide full particulars of the issues to resolve with their Application. If an applicant refers to an attached letter in filing their Application, it is imperative that the document accompany the Application. In this case, the Application refers to a letter that neither I nor the landlord had. Nor, was the landlord in receipt of evidence. ..

In considering whether to invoke the discretion allowed to me by Rule of Procedure 3.7, I have taken into consideration that much of the tenant's written evidence was comprised of a series of over 60 text messages, many of which are undated, and which do not clearly identify the party involved in these messages. Video and audio evidence presented seems to have little real bearing on the issues properly before me. Without any type of summary sheet or way of catologuing the disparate pieces of evidence presented by the tenant, I find that the tenant's evidence is for the most part too unorganized and clear to ascertain who was saying what to whom, and when this occurred, to be of any value to a determination of the issues that I am considering as part of this hearing. For that reason, I am not considering many of the text messages

entered into written evidence by the tenant. However, I have given consideration to those portions of the evidence which are clearly labelled and distinguished from the other mass of text messages presented without any proper explanation as to their meaning and relevance to the issues in dispute. In particular, I was able to consider the material attached to the tenant's amended application, and the video and audio evidence.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for cause Is the landlord entitled to recover the filing fee for this application from the tenant? Should any other orders be issued with respect to this tenancy?

Background and Evidence

On November 15, 2017, the parties signed a fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that was to run from November 15, 2017 until November 15, 2018. Monthly rent is set at $2,900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's $1,450.00 security deposit paid on November 15, 2017.

The landlord's 10 Day Notice identified $2,900.00 in rent as owing as of December 1, 2018. The tenant testified that this amount was paid on December 1 or 2, 2018 to the landlord's brother by way of a bank draft, the usual way that monthly rent has been paid to the landlord during the recent history of this tenancy. The tenant entered into written evidence a copy of a series of these bank drafts, including one that is dated December 1, 2018 in the amount of $2,900.00. The landlord testified that he has never received this payment. The landlord confirmed that the tenant did make a payment for the January 2019 rent, of $2,350.00, the amount of the January 2019 rent less a $550.00 monetary award granted to the tenant in a November 26, 2018 decision by another arbitrator appointed pursuant to the *Act*. The landlord said that if the tenant can supply proof that the December 2018 rent had been paid and accepted by the landlord, that the landlord would withdraw the 10 Day Notice. However, the landlord also conceded that they had not reviewed all of the written evidence supplied by the tenant on the USB.

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenant to end this tenancy by December 31, 2018 for the following reasons cited in that Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *jeopardize a lawful right or interest of another occupant or the landlord.*

In the Details of the Dispute section of that Notice, the landlord identified the following three concerns leading to the issuance of the Notice:

1. *Tenant refused entry to the property and uttered threats to landlord.*
2. *Tenant is potentially wilfully damaging appliances and landlord fears further property damage.*
3. *Tenant is smoking inside property after repeated requests by landlord to cease and desist smoking inside property.*

Analysis - 1 Month Notice

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In the landlord's written evidence and in their sworn testimony, the landlord asked for a determination that the tenant's application to cancel the 1 Month Notice was submitted beyond the 10 day time limit for filing that application. The landlord noted that there was undisputed evidence that the tenant actually received the 1 Month Notice on the date it was posted on the tenant's door and that it took the tenant 12 days to file the application to cancel the 1 Month Notice.

The RTB's Rules of Procedure establish the following definition of days for guidance by RTB staff and during arbitrations conducted pursuant to the *Act*:

b) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

In this regard, I note that the 10th day after the tenant's receipt of the 1 Month Notice fell on Saturday, December 8, a day when the RTB's Office was not open for business. The tenant's application to cancel the 1 Month Notice was filed with the RTB on the next business day, Monday, December 10, 2018. Thus, I find that the tenant's application to cancel the 1 Month Notice was submitted by the tenant in accordance with the timelines established by section 47(4) of the *Act*.

At the hearing, the landlord maintained that the presence of uninsured vehicles permitted on the landlord's property by the tenant provided proof that the tenant was conducting an unlicensed and illegal operation as a seller of cars from the property. The landlord also maintained that there was evidence that smoking was happening inside the rental premises, which might also constitute illegal activity. The landlord also provided sworn testimony and written evidence that the tenant threatened the landlord, a threat that was reported and investigated by the local police. The landlord provided no copy of any police report of this alleged incident.

Although I have given the landlord's concerns about illegal activity due consideration, I find that the landlord has fallen short of demonstrating that the tenant is responsible for any illegal activity occurring on the rental property that jeopardizes the landlord's lawful rights.

The landlord has provided some sworn testimony and written evidence to support the landlord's assertion that the tenant's actions significantly interfere with and unreasonably disturb both the landlord and the tenant in the other suite in this rental unit. Although the landlord entered three letters from others regarding the tenant's behaviours, none of these letters were signed, including the one attributed to the landlord's spouse. With no witnesses and with no signed documents from anyone regarding the tenant's behaviours, the landlord's notice for the significant interference with and unreasonable disturbance of the landlord and the other tenant relied almost solely on the landlord's sworn testimony and written evidence, disputed by the tenant, who claimed that it was the landlord and not the tenant who has acted inappropriately during this tenancy. While threatening behaviours of the nature identified by the landlord are of great concern, I find that the landlord produced insufficient evidence of any such threat issued by the tenant against the landlord. Again, I find that the landlord

has not met the burden of proof to establish that this tenancy can be ended for cause on the basis of significant interference with and unreasonable disturbance caused by the tenant.

I find little evidence to connect the landlord's claim that smoking within the rental unit is causing a significant risk to the landlord's property. While the landlord may have made repeated requests to refrain from smoking inside the rental premises, the landlord did not cite any specific restrictions on smoking within the Agreement or any associated Addendum signed by the parties when this tenancy began. The tenant also claimed that this has not been happening within the rental property.

I find that the landlord's assertion that the tenancy can be ended for cause on the basis of the tenant having caused significant damage to the landlord's property relies principally on the landlords claim that the tenant has removed existing appliances from the rental unit without the landlord's permission. While I may not accept that the evidence supports the landlord's claim that the tenant "is potentially wilfully damaging appliances" , the tenant did not dispute the landlord's claim that the tenant removed the existing stove/oven, which the landlord said was still under warranty, without the landlord's permission and left it outside, exposed to the elements. Given that the tenant has raised concerns about the functionality of other appliances in the rental unit, including at various times the fridge, the dishwasher and the washing machine, and based on the evidence seems to be of the view that he need not obtain the landlord's permission to repair or dispose of such items, I accept that the landlord has reasonable cause to be concerned that the tenant may damage or remove other appliances in the rental unit without the landlord's permission. Under these circumstances, I find that the landlord has established on a balance of probabilities that the tenant's actions have put the landlord's property at significant risk and, as such, I find that the landlord's 1 Month Notice was issued for valid reasons. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession to take effect on January 31, 2019, the date at which the landlord's acceptance of a payment from the tenant for January 2019 expires.

Since I have dismissed the tenant's application to cancel the 1 Month Notice, there is no need to consider the applications regarding the 10 Day Notice.

As this tenancy is to end shortly, many of the other portions of the tenant's application are now moot and no orders are necessary.

Since the landlord has been partially successful in this application, I allow the landlord to recover the $100.00 filing fee from the tenant. To implement this monetary award, I allow the landlord to retain $100.00 from the tenant's $1,450.00 security deposit.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on January 31, 2019. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the claims from the parties associated with the 10 Day Notice, as there is no longer any need to consider those applications.

I order the landlord to retain $100.00 from the tenant's security deposit in order to implement the recovery of the landlord's filing fee for this application The revised value of the security deposit is reduced from $1,450.00 to $1,350.00.

I dismiss the remainder of the landlord's application for a monetary award with leave to reapply.

I dismiss the tenant's application for a monetary award with leave to reapply. I have not considered the remainder of the tenant's application as these issues were not related to the central issues in dispute as to whether this tenancy should continue.

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: January 15, 2019

Residential Tenancy Branch