Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on January 9, 2019. The tenant seeks the following remedies:

1. an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47(4) of the Act; and,
2. an order for compensation for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on February 21, 2019 and the landlord, two witnesses for the landlord, the tenant, and one witness for the tenant, attended the heating. The parties were given a full opportunity to be heard, to present testimony, and to make submissions. The parties briefly raised an issue of late service of evidence, which I will address in my preliminary issues section below.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

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: Service of Evidence

The tenant raised an issue with respect to being served the landlord's evidence late. Rule 3.15 of the *Rules of Procedure* states that a respondent must serve their evidence on the applicant not less than seven days before the hearing. The landlord acknowledged serving her documentary evidence on February 15, 2019, which is six days before the hearing. The tenant stated that he had not had time to review all of the landlord's evidence, the package of which consists of 105 pages. The landlord pointed out that the vast bulk of the evidence contained documents that the tenant was, or would, already be familiar with. This appears to be the case.

I note that the tenant submitted more than two dozen pieces of video, photographic, and other documentary evidence six and five days before the hearing. In asking the tenant why he had submitted this evidence so late into the process, he explained that he had originally visited the Residential Tenancy Branch's Burnaby office on February 6, 2019, and had provided the staff with a DVD disk, and only found out later that the staff were unable to upload the evidence from the disk. He commented that he had not submitted the evidence earlier because he had no evidence.

Rule 2.5 of the *Rules of Procedure* state that an applicant should submit copies of all documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17. The tenant applied for dispute resolution on January 9, 2019, and chose not to submit any evidence until February 6, 2019, almost a full month later. While I accept his explanation for having to later upload his digital evidence, his explanation for attempting to upload any evidence until a few weeks before the hearing is unacceptable.

Though both parties failed to comply with the *Rules of Procedure* with regard to proper and timely submission and service of evidence, both parties were served with the evidence and had time to review the evidence in advance of the hearing. Pursuant to section 9.1 of the *Rules of Procedure,* which states that "failure to comply with these Rules of Procedure will no in itself stop or nullify and proceeding" and as such I accept both parties' evidence in respect of this dispute.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to compensation for the cost of the filing fee?

Background and Evidence

I note at the outset that the duration of this hearing was just over one hour. I cautioned the parties at the beginning of the hearing that given the rather large volume of evidence and numerous issues with this tenancy, that they would need to focus on the central issues and be mindful of the time. The parties did not have an opportunity to call their witnesses, as the parties both provided the majority of the testimonial evidence. One of the landlord's witnesses spoke briefly, however, at a few points.

The landlord testified that the tenancy commenced on September 24, 2009, that rent is $750.00, and that the tenant paid a security deposit of $365.00. I asked if the tenant had paid a pet damage deposit, to which the landlord responded, "Pets? I have [a] problem enough with [this] tenant, I don't need additional problems." A copy of the written tenancy was submitted into evidence.

The landlord testified that when the tenancy started, the tenant was a "very different person." However, he has changed since becoming friends with an individual V.M. (the tenant's witness). The landlord raised issues with the tenant smoking on the property, even though there was a verbal agreement for him not to do so. He was originally allowed to do so, but the landlord's age has deteriorated such that having smoke around is not conducive to living. She is unable to open her windows or doors because of the smoke. She further explained that the tenant said, "no, we're not smoking on a schedule"; the parties had tried to reach a compromise where the tenant was only to smoke when the landlord is not home.

Submitted into evidence was a copy of physician's letter, dated November 16, 2017, in which the doctor writes "This patient [the landlord] has a significant medical illness which is exacerbated by exposure to smoke. Refraining from all exposure to tobacco smoke will help ensure long term lung health." Also submitted into evidence is a copy of a handwritten letter, dated October 26, 2018, in which the landlord writes to the tenant, "There is to be no marijuana use in or around my property, especially inside my house. [. . .] This is completely unacceptable and I do not condone this."

She also explained that she does not feel safe in her own home (she resides upstairs, and the tenant lives in the basement suite), that the tenant is an "angry tenant." The landlord provided an example of the tenant visiting her in her kitchen on September 7, 2018, and for reasons that were not entirely clear, the two got into a rather angry conversation wherein the tenant told the landlord "one day I will [unintelligible] your ass."

Another time he called the landlord “a crazy bitch.” The tenant has, the landlord explained, a temper. He is also “extremely disrespectful.”

The landlord then testified about an issue involving an exterior motion sensor light which the tenant apparently fiddles with. The tenant had changed it such that it often, and has not, worked when she has come home, creating a hazard.

Next, the landlord explained that there was an incident in October 2018 when the tenant had taken out the landlord’s property from cupboards in the laundry room and placed it on the floor, for no apparent reason. It is behaviors like this, she said, that have caused her to “not [feel] safe with him anymore.” She added that the tenant had offered to move out, “buy him out,” if the landlord paid him $36,000.00,

The landlord’s daughter added that her mother is “extremely stressed out” and that there is nothing but bickering, and the situation has caused “great upheaval” within the family.

On December 29, 2018, the landlord served the Notice on the tenant in-person. Page 2 of the Notice indicates that the grounds for ending the tenancy are that the tenant has (1) significantly interfered with or unreasonably disturbed the landlord, (2) seriously jeopardized the health or safety or lawful right of the landlord, (3) put the landlord’s property at significant risk, (4) engaged in illegal activity that has or is likely to (a) damage the landlord’s property, (b) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, and (c) jeopardize a lawful right or interest of another occupant or the landlord. Also, that the tenant has not done required repairs of damage to the unit/site.

The landlord testified that the damage caused refers to the tenant’s damaging of tiles. The tenant disputed this and said that when he is working out he does not drop the weights and has not damaged the floor tiles.

The tenant testified that the landlord did ask him in July 2018 to stop smoking. He admitted to smoking, however, and the landlord called him “a piece of shit” and hopes that he dies soon. He commented that he does his best to avoid her. However, he also stated that he “can’t see how smoking is a problem if [the landlord] closes the door and windows.” He also admits that he smokes cannabis, and that it helps him cope with stress (which has increased lately due to work) and helps him have a better sleep.

The tenant disputed that there should be any reason for the landlord being afraid of her.

In respect of the motion sensor light, the tenant explained that he does not want bright light on his face, so he has turned the light off on a few occasions. And, while admitting that he has made a mistake in this regard, that the landlord has made a "huge deal out of it."

The tenant spoke briefly about the $36,000.00 and that it was simply a suggestion, and that he could, if he chose to, pursue this monetary amount in court. He did not explain what he meant by this, however.

The tenant further testified about an inspection that the landlord conducted (there is a video submitted into evidence) in which the landlord kicked his mixing bowls and double-stacked casserole dishes. He also testified that the landlord tried to illegally terminate the laundry facilities.

The landlord had testified that the tenant pays her the rent in $5.00 bills. The tenant said that, yes, he pays the rent in $5.00 bills and that he is permitted to do that under the *Currency Act* (R.S.C., 1985, c. C-52).

In rebuttal, the landlord stated that everything the tenant testified about is a lie. "All he is saying is lying," were her words. She never said that she hopes the tenant dies soon. She has failed to get a good sleep throughout the latter part of this tenancy.

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.

In this case, there are several grounds on which the Notice was issued. I will first turn to the following ground, namely, the ground under section 47(1)(d) of the Act which states:

> 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 [. . .]
>
> > (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

In this case, while the tenant was originally allowed to smoke, the landlord has asked him some time ago to stop smoking due to her ailing health. A letter from a physician clearly states the dangers of tobacco smoke, despite the tenant's comment that it does not reference anything about smoke. The tenant has repeatedly asked him to stop smoking, which he has failed to do. The tenant testified that he cannot see how the smoking is a problem if the doors or windows are closed. However, the landlord testified that smoke, in particularly cannabis smoke, makes its way up from the rental unit into her part of the house.

I find that, despite the evidence establishing that the landlord cannot be around cigarette or cannabis smoke, and that she communicated this to the tenant on more than one occasion, the tenant wantonly continued an activity which seriously jeopardized the landlord's health. He was unwilling to agree to a compromise and was unwilling to leave the property and smoke on the sidewalk, or elsewhere.

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 met the onus of proving the ground, specifically that of section 47(1)(d) of the Act, on which the Notice was issued. Having found that the landlord has established this ground for ending the tenancy, I need not consider the remaining grounds on which the Notice was issued.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

Having reviewed the Notice, I find that the Notice complies with the requirements set out in Section 52 and as such grant the landlord an order of possession.

Conclusion

The tenant's application is dismissed without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

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

Dated: February 23, 2019

Residential Tenancy Branch