Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") dated January 16, 2019, pursuant to section 47;

The tenant, the tenant's advocate, and the landlord's agent (the "landlord") attended the hearing. The hearing process was explained and parties were given an opportunity to ask any questions about the process. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), along with her evidence, to the landlord by way personal service via hand. The landlord confirmed receipt of the dispute resolution hearing package and the tenant's evidence. Therefore, I find that the landlord has been served with the notice of dispute resolution package, and the tenant's evidence, in accordance with section 89 of the Act.

The landlord testified that she served her evidence package to the tenant. The tenant confirmed receipt of the landlord's evidence.

I note that Section 55 of the Act requires that 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 that is compliant with the Act.

Preliminary Issue – Amendment of Tenant's Application

The landlord testified that the address of the rental unit had been incorrectly provided by the tenant, such that an incorrect unit number was listed. The parties agreed that the application should be amended to reflect the correct unit number. Therefore, pursuant to section 64(3)(c), I amend the application to reflect the correct unit number and the change of the address is reflected in the style of cause.

Issues(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession, pursuant to Section 55 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and /or arguments are reproduced here. I refer only to the relevant facts and issues in this decision. The principal aspects of the tenant's claims and my findings are set out below.

The parties agreed that the tenancy began on December 01, 2018. The monthly rent was determined to be due on the first day of each month. The monthly rent was set at $635.00 and remains at that amount. The parties agreed that the tenant provided a security deposit in the amount of $317.50 which continues to be held by the landlord. A pet damage deposit was not collected by the landlord. The parties provided as evidence a copy of a written tenancy agreement which confirms the details provided orally by the parties.

The subject rental unit is an apartment unit in a multi-unit apartment building consisting of 44 units.

The landlord issued a One Month Notice, dated January 16, 2019, to the tenant with an effective vacancy date of February 28, 2019. The landlord testified that the One Month Notice was served to the tenant on January 17, 2019, by posting it to the door of the rental unit. The tenant confirmed that she received the One Month Notice on January 17, 2019.

The landlord's One Month Notice identified the following reasons for ending this tenancy for cause:

- *Tenant or a person permitted on the property by the tenant has:*
    - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*
- *Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.*

The landlord testified that the tenant's bathroom was identified as needing repairs shortly after the tenancy began. The landlord stated that the bathroom floor needed to be repaired, such that the floor covering was to be removed to allow removal and replacement of the sub-floor, after which the floor covering was to be replaced. The landlord provided that toilet needed to be removed and replaced as well, since it was "shaky."

The landlord asserted that the building maintenance manager estimated that the entirety of the work to be done in the bathroom was not a major project, and should have been completed in few days. However, due to the tenant's behaviour (which the landlord categorized as a significant interference and major disturbance), the project took over three weeks.

The landlord testified that the tenant would constantly interfere with the maintenance manager, such that she would hinder and obstruct his ability to undertake the necessary work in order to complete the project. The landlord provided as evidence a letter from the maintenance manager in which he details the nature of the tenant's interference and the delay caused as a result.

The landlord also provided as evidence warning letters sent to the tenant which detail her interference with respect to the landlord's attempt to repair the bathroom. The letters provide a warning to the tenant to cease causing a disturbance and to cease interfering with the landlord's effort to complete the repairs. The letters are dated December 18, 2018; December 21, 2018; January 03, 2019; and January 05, 2019.

A summary of the tenant's behaviour described by the landlord (provided as oral testimony, in the warning letters, and in the landlord's submissions) as causing significant interference and disturbance to the repair efforts is as follows:

- Tenant frequently drunk and refused to stay out of the bathroom while the maintenance person tried to complete required work. While drunk, the tenant fell into the bathroom and into the area where the work was being done.
- Tenant frequently disturbed the maintenance person by allowing her dog to enter the bathroom while work being conducted.
- Tenant frequently interrupted the maintenance person by constantly entering the bathroom for various unnecessary reasons, such as trying to clean the bathroom while the repairs were not yet completed, and also moved items around in the bathroom which interfered with the workers.
- Tenant drunk inside the rental unit, fell over her vacuum, interrupting the workers.
- The workers had placed adhesive material on the floor which needed to be dried. The workers blocked-off access to the bathroom to ensure nobody entered after an adhesive layer was applied to a newly-installed sub-floor. The adhesive layer needed to be left uninterrupted to allow it to dry. The tenant and her dog entered the bathroom and walked over the adhesive layer, thus damaging the adhesive layer, rendering it wasted. The landlord was required to scrape-off the damaged adhesive layer and reapply it. The landlord asserted that this resulted in lost time, lost materials and supplies, a damaged adhesive layer, and meant having to do the same task twice, resulting in an overall increase in the cost of the repair project and increase in the duration of the project.
- The tenant placed the tools belonging to the workers in a bucket of adhesive, thus damaging the tools.
- The tenant constantly interrupted the workers by entering the bathroom and speaking with the workers, causing delay and disruption to the workers' ability to work.

The landlord also submitted as evidence a letter, dated February 15, 2019, from a person, who, for the purpose of this decision, will be identified as "EV." EV is the person identified by the landlord as being the building's "cleaning lady." In her letter, EV confirms that the tenant interfered with the personnel repairing the bathroom in the tenant's unit.

The landlord stated that the tenant's behaviour resulted in the project dragging on for three weeks, when it could have been completed in about three or four days, and that the tenant caused damage and delay which resulted in the landlord incurring greater cost. In summary, the landlord stated that the tenant significantly interfered with and unreasonably disturbed the landlord's ability to repair the rental unit.

The tenant testified to deny the landlord's characterization of her as always being drunk. The tenant denied causing a disturbance to the personnel working to repair the bathroom. The tenant asserted that the personnel conducting repairs in the bathroom were not competent, and that such incompetence attributed to the delay in completing the work.

The tenant confirmed receipt of the warning letters issued by the landlord.

Analysis

Section 47 of the Act allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The tenant provided sworn testimony that she received the One Month Notice on January 17, 2019. Therefore, I find that the tenant was served with the One Month Notice on January 17, 2019.

In accordance with subsection 47(4) of the Act, the tenant must file an application for dispute resolution within ten days of receiving the One Month Notice. In this case, the tenant received the 1 Month Notice on January 17, 2019. The tenant filed her application for dispute resolution on January 21, 2019. Accordingly, I find the tenant filed within the ten day limit provided for under the Act.

Where a tenant applies to dispute a One Month Notice, or in a matter in which the landlord seeks an Order of Possession, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the One Month Notice to end a tenancy for cause is based. Therefore, in the matter before me, the burden of proof rests with the landlord.

I find that the landlord has met the burden of proof to demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. My reasons for finding so are set out below.

The question of what occurred is not an easy determination to make when weighing conflicting verbal testimony. In the matter before me, I find that, on a balance of probabilities, it is more likely than not that the landlord's testimony represents a factual and likely depiction of the events preceding the landlord's decision to issue the One

Month Notice. Overall I find that the landlord's evidence accords with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable.

The often cited test of credibility is set out in *Faryna v Chorny,* [1952] 2 DLR 354 (BCCA) at p.357:

> The real test of the truth of the story of a witness… must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find that the landlord was consistent in her testimony, and that her testimony fit with the evidentiary material provided, such as the witness statements from the building maintenance manager and the building's cleaner EV. The landlord's testimony also accords with the four warning letters (all of which the tenant confirmed receipt of) which document the interference and disturbance caused by the tenant's behaviour while the landlord attempted to complete repair work in the bathroom.

Therefore, I accept the landlord's testimony and evidence which outlines the tenant's behaviour. I find that based on the manner in which the tenant behaved and conducted herself while the landlord was attempting to complete repairs, the tenant did significantly interfere with and unreasonably disturb the landlord.

Therefore, the landlord had cause to issue a One Month Notice pursuant to section 47(1)(d) of the Act, which provides:

> 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
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

Section 47(3) of the Act requires that "a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*." I am satisfied that the landlord's One Month Notice entered into written evidence was on the proper Residential Tenancy Branch form and complied with the content requirements of section 52 of the Act.

Based on the foregoing, I find that the landlord has proven that she had valid cause to issue the One Month Notice pursuant to section 47(1)(d) of the Act.

Therefore, I dismiss the tenant's request to cancel the landlord's One Month Notice. I find that pursuant to the One Month Notice dated January 16, 2019, the tenancy ended on the effective date of the One Month Notice, February 28, 2019.

Section 55 of the Act provides that if a tenant applies to dispute a notice to end tenancy, an Arbitrator is required to issue an Order of Possession if the tenant's application is dismissed, and if the notice complies with section 52 of the Act.

Section 52 of the Act outlines the form and content required for a notice to end tenancy issued under the Act. I have reviewed the One Month Notice dated January 16, 2019 and find it complies with section 52 of the Act in form and content.

I have dismissed the tenant's application to dispute the One Month Notice and found the One Month Notice complies with section 52 of the Act. Therefore, pursuant to section 55 of the Act, I issue the landlord an Order of Possession for the rental unit.

I grant the landlord an Order of Possession effective two days after service on the tenant, as the effective date of the One Month Notice has passed and the tenant continues to reside in the rental unit. The landlord confirmed that the tenant did not pay rent for the month of March 2019. Therefore, the tenant does not maintain a right to occupy the rental unit beyond the February 28, 2019 effective date of the One Month Notice.

As I have upheld the landlord's One Month Notice, and granted an Order of Possession pursuant to the One Month Notice, on the basis that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, I find that the need does not exist to consider and make findings regarding the other reasons indicated on the One Month Notice, as the issue of determining the validity of the other reasons has been rendered moot. Therefore, I make no findings of fact or law relating to the other reasons indicated on the One Month Notice.

Conclusion

The tenant's application is dismissed, in its entirety, without leave to re-apply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

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: March 08, 2019

Residential Tenancy Branch