Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for February 25, 2019. The hearing was adjourned due to lack of time to hear the tenant's application to cancel the 1 Month Notice. I noted that although the hearing on February 25, 2019 was 57 minutes in duration, a substantial portion of the hearing was utilized to address the preliminary issues which are addressed in my interim decision dated February 25, 2019. Allowing the adjournment was necessary for both parties to be given a fair opportunity to be heard. I took in consideration the urgency of the matter, and a hearing was scheduled on an urgent basis at my earliest availability.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47, and authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act.*

The landlord attended the hearing with his counsel NA ("landlord"). Both parties 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 landlord gave undisputed sworn testimony that the 1 Month Notice, with an effective date of December 17, 2016 was served to the tenant on November 17, 2016. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

During the hearing the tenant indicated that he wished to withdraw his application scheduled for April 16, 2019 at 11:00 A.M. The tenant's application scheduled for that date and time is therefore cancelled, and both parties are not required to attend at that date and time.

Preliminary Issue: Adjournment of Hearing

At 11:26 a.m., the tenant made an application requesting an adjournment of the hearing in order to make further submissions and finish his cross examination of the landlord. The tenant began his cross examination at 10:06 a.m., but stated that he had at least 80 questions to ask the landlord. When asked how much more time the tenant needed, the tenant estimated 3 more hours. The landlord was opposed to the application for an adjournment stating that an adjournment would not be fair to him as a previous adjournment had already been granted, and a substantial amount of time has been provided to the tenant to complete his submissions and cross examination. The landlord felt an adjournment would further delay the matter, which would be prejudicial to the landlord who was ready to proceed.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing".

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1…
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing…
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

This matter had been adjourned once in order to provide both parties the time and opportunity to cross examine each other, provide sworn testimony, and make submissions. In consideration of the tenant's adjournment request and whether it meets the criteria as set out above, I was not satisfied that an adjournment was necessary or justified. During this reconvened hearing scheduled for 9:30 a.m., the tenant was given ample time and multiple opportunities to present his evidence, and cross examine the landlord.

Despite the fact that I had allowed the tenant to start his submissions and cross examination at 10:06 a.m., the tenant was still not finished at 10:47 a.m. As I wanted to

give a fair opportunity to the tenant to finish his cross examination and provide sworn submissions, I allowed the tenant to continue. The tenant expressed concern that he was not allowed to ask his “80 questions”, and it was explained to the tenant that I was not disallowing his cross examination, but just noting that the hearing had already exceeded 1 hour and 16 minutes, and I wanted to ensure that both parties had ample and fair opportunity to present their case within the available time. A further adjournment could mean a substantial delay in a resolution of the matter.

At 11:26 a.m., the tenant made a request for an adjournment as he believed that 3 more hours would be required. After considering the concerns of both parties, I advised both parties that I was not granting a further adjournment of this matter.

I found that the argument provided by the tenant for a further adjournment did not meet the requirements of Rule 6.4, namely that an adjournment would be prejudicial to the other party who attended both hearings with his counsel, and namely that I was not satisfied that an adjournment would contribute to a resolution of the matter. I note, as summarized above, that the tenant was given ample opportunity and time to present his testimony and cross examine the landlord.

While I am sympathetic to the tenant’s situation, I find that the tenant failed to establish how this adjournment request was due to issues beyond his control. I find that the tenant had several months to prepare for this hearing, and the tenant failed to establish why 3 additional hours were required in addition to the 2 hours and 53 minutes already utilized for the scheduled hearings.

Furthermore, as this matter pertains to the matter of a 1 Month Notice, I find the landlord would be significantly prejudiced by a delay in this matter by adjourning the hearing and further delaying this matter.

The request for an adjournment was not granted. The hearing proceeded, and concluded after the tenant was given an extra 10 minutes to finish his cross examination. Both parties were then given the opportunity to make their closing statements, and the hearing concluded at 11:40 a.m.

Preliminary Issue: Whether the principle of *Res Judicata* applies

The tenant requested that the 1 Month Notice dated January 11, 2019 be cancelled on basis of the principle of *res judicata*.

The tenant provided undisputed evidence that the landlord had previously attempted to end this tenancy by way of 2 Month Notices and requests to Arbitrators, but was unsuccessful in doing so.

The doctrine of *res judicata* prevents a litigant from raising an issue that has already been decided in a previous proceeding. The tenant's argument is that the landlord was unsuccessful in ending this tenancy on the merits of previous notices issued to the tenant. The tenant also referenced attempts by the landlord to end this tenancy without issuing a notice to end tenancy in the proper form and content.

Although it was previously decided that the landlord did not have grounds to end the tenancy on the basis of the notices issued to the tenant, resulting in the dismissal of the notices to end tenancy, I find that the grounds for which the notices were issued are not similar in nature to the ones provided on the 1 Month Notice dated January 11, 2019. The specific notices referenced by the tenant in this hearing relate to 2 Month Notices for Landlord's Use, while the notice in this hearing relate to a 1 Month Notice for Cause.

I am not satisfied that this matter was already decided, which is the issue of whether the landlord had grounds to end this tenancy for the reasons provided on the 1 Month Notice dated January 11, 2019. Although all these matters relate to, and arise from the same tenancy, and involve the same parties, the grounds provided on the notices are different. I also find that the landlord references behavior of the tenant that is allegedly ongoing. For these reasons I find that this current application is not *res judicata*.

Issues

Should the landlord's 1 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began in December of 2012. Monthly rent is currently set at $770.00 after the tenant was awarded a rent reduction effective February 1, 2019 by an Arbitrator after a previous hearing. Both parties have been before the Residential Tenancy Branch for matters related to this tenancy, and this tenancy is still ongoing.

This decision relates to the tenant's application for cancellation of a 1 Month Notice issued to the tenant.

The landlord submitted the notice to end tenancy providing two grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Both parties provided a substantial amount of written evidence for this hearing, in addition to the submissions made during the hearing by both parties which started at 9:30 a.m., and did not end until 11:40 a.m.

The landlord provided the following submissions for why the 1 Month Notice was issued. The landlord testified that he is seeking the end of this tenancy for several reasons, which include the ongoing harassment from the tenant as evidenced by the 40 links on the internet uploaded by the tenant which contain malicious content about the landlord. Much of this content is in the form of videos on a public website. The titles and content of these videos, the landlord submitted, targeted the landlord and well as his family. The landlord provided documentary evidence to support the existence of these videos. The landlord testified that the source of these videos was admitted by the tenant in a message from the tenant that stated “Be advised that my people are uploading public videos.”

The landlord testified that the ongoing harassment from the tenant also involves emails from the tenant to the landlord’s mortgage lender. The content of these emails include allegations of negligence on part of the landlord. The landlord also included a letter to the local newspaper from the tenant, and several police reports which document calls to the police from July 2018 to October 2018. The landlord submitted that there were at least 12 police reports, which range from calls about threats and wrongdoings on part of the landlord to complaints about the landlord’s music.

The landlord expressed concern about the impact of this harassment, not only himself, but also on his family and his business. The landlord has received emails from prospective clients informing him that an internet search had resulted in the negative content about him uploaded by his tenant.

In addition to the harassment, the landlord felt the tenant put his property at risk by installing alarms without his permission, and by creating a fire hazard due to hoarding.

The tenant requested the cancellation of the 1 Month Notice for several reasons. The tenant testified that it was an undisputed fact that the landlord had made numerous attempts to end this tenancy unsuccessfully. The tenant submitted that the landlord’s previous notices were cancelled by Arbitrators, and that this matter is res judicata.

The tenant also questioned why the landlord has not filed any defamation or breach of privacy claims against the tenant if he felt the tenant has violated the landlord’s rights. The tenant also questioned the landlord’s credibility in his testimony and submissions,

stating that the landlord is now attempting to end the tenancy on the basis of a 1 Month Notice after being unsuccessful in his previous attempts to end the tenancy.

The tenant wanted to highlight the fact that the landlord had breached the *Act* on previous occasions, which resulted in the rent reductions awarded to the tenant. The tenant also highlighted the fact that the landlord was candid about his campaign to end this tenancy, which involved unlawful acts to do so.

The tenant also questioned the landlord's claims that that the tenant's behaviour has affected his business. The tenant proposed that the landlord had caused the problem, and is now seeking relief of the problem that he himself caused.

The tenant asked the landlord if the landlord had obtained an independent, professional opinion on whether the tenant's behaviour puts the landlord's property at risk.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

> ***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,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on January 15, 2019, 4 days after receiving the 1 Month Notice. As the tenant filed his

application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

I have considered the concerns brought up by both parties, as well as the evidence that was provided for this hearing. The burden is on the landlord to demonstrate how the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or seriously jeopardized the health and safety of the landlord, or other occupants.

The landlord provided detailed evidence to support how the tenant had repeatedly interfered with and disturbed him. Despite being given over 2 hours to challenge the reasons provided on the 1 Month Notice to End Tenancy, the tenant was more focused on questioning the landlord's credibility and reputation. Although the tenant brought up many issues which are concerning in nature, including the landlord's previous failures to comply with the *Act,* and undisputed hostility towards the tenant, the tenant had deliberately and intentionally targeted the landlord in a manner that was meant to disturb or interfere with the landlord's life. The tenant did not deny or dispute the fact that he had contacted the landlord's mortgage lender, or that he had uploaded numerous videos he had made about the landlord to a public and searchable online video database without the landlord's knowledge or permission, and with the intention to cause a disturbance to or interfere with the landlord's life. I do not find that the absence of defamation claims by the landlord against the tenant, nor do I find the existence of previous breaches by the landlord, distinguish the landlord's right to end this tenancy on the grounds provided on the 1 Month Notice or validity of the notice itself. The criteria for upholding the 1 Month Notice is whether the landlord had demonstrated that he had cause to end the tenancy on the reasons provided on the 1 Month Notice, and on this basis I am satisfied that the landlord had met the burden of proof to demonstrate that the tenant's actions are serious enough in nature to warrant the end of this tenancy.

Under these circumstances, I am dismissing the tenant's application to cancel the landlord's 1 Month Notice.

Section 55(1) of the *Act* reads as follows:

> ***55*** *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

> *(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
>
> *(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the landlord's 1 Month Notice dated January 11, 2019 is valid, and complies with section 52 of the *Act.* Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 1 Month Notice, which was February 28, 2019. As the tenant did not move out by that date, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenant was unsuccessful in his application, the tenant's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

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

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 11, 2019

Residential Tenancy Branch