Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated May 27, 2019 ("One Month Notice"), and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The Tenant, an advocate for the Tenant ("Advocate"), the Landlord, D.B., and a Property Manager, D.V., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Parties were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Advocate provided his email address and the Landlord provided her mailing address at the outset of the hearing and confirmed their understanding that the Decision would be emailed to the Advocate for the Tenant, and mailed to the Landlord, with any Orders sent to the appropriate Party.

At the start of the hearing, the Advocate and the Tenant requested an adjournment,

because the Tenant said she had suffered a heart attack and is diabetic. The Tenant said that her blood sugar went through the roof, as a result of this process. The Advocate said: “I’ve seen [the Tenant] this past Thursday and regarding her anxiety and physical issues, as well. I instructed her to see her doctor.” The Tenant and Advocate submitted documents two days prior to the hearing with this request.

These documents included the following note from a health care worker:

> To Whom it May Concern
>
> Subject: Tenancy Dispute Resolution Hearing
>
> I have been [the Tenant’s] primary care provider at the [“Health Centre”] since October 2018. Since meeting [the Tenant], I have noted significant mental and physical distress related to her current living situation. She has mentioned numerous incidences that have caused her to fear for her safety within her home. These have contributed to extreme anxiety and manifested as exacerbations of her fibromyalgia.
>
> [The Tenant] requires more time to prepare for the tenancy dispute hearing scheduled for August 12, 2019. She is requesting that the hearing be adjourned to a later date in order to accommodate her mental and physical disabilities.
>
> Yours Sincerely,
> [Name and signature of Health Care Worker]

I note this letter does not address the Tenant’s heart or diabetic condition, which were stated as the reasons for the adjournment.

The Advocate also wrote a letter dated August 8, 2019, requesting an adjournment, as he said the Tenant told him: “…that the stress and anxiety of this situation has had a very severe effect on her mental and physical well-being.” In the hearing, the Tenant said that she wanted “about a week” more time to prepare for the hearing. However, I explained that a reconvened hearing could not be scheduled that quickly, as RTB hearings are scheduled months in advance, and that my schedule would not accommodate a reconvened hearing this soon. I advised that I must consider the potential prejudice to the Landlord, as well as the Tenant’s concerns in terms of an adjournment.

The Landlord was opposed to the adjournment, as the Tenant has had over two months to prepare for the hearing, and the Landlord said: “This has gone on long enough.”

Rules 7.8 and 7.9 set out what an Arbitrator must consider with an adjournment request:

> **7.8 Adjournment after the dispute resolution hearing begins**
> At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.
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> A party or a party’s agent may request that a hearing be adjourned.
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> The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.
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> **7.9 Criteria for granting an adjournment**
> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:
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> • the oral or written submissions of the parties;
>
> • the likelihood of the adjournment resulting in a resolution;
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> • the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
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> • whether the adjournment is required to provide a fair opportunity for a party to be heard; and
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> • the possible prejudice to each party.

The Tenant appeared at the teleconference hearing with her Advocate and represented herself ably. I acknowledge that a dispute resolution hearing can be daunting to many parties; however, it is not clear how anything would change in the Tenant’s circumstances in the course of the one week that she requested we adjourn. Further, since the adjournment would have to be scheduled closer to six to eight weeks from now, I must consider the administrative unfairness to the Landlord in delaying the proceedings so long.

I appraised the Tenant’s readiness to proceed by asking questions about the situation and gathering administrative details from the Parties early in the hearing. The Tenant did not exhibit any reluctance to proceed, despite the initial request for an adjournment, so I proceeded with the hearing, keeping in mind the Tenant’s stated anxiety about the situation. Based on a consideration of these factors, overall, I declined to grant the

Tenant an adjournment of the hearing, and I proceeded to gather testimony and other evidence from the Parties.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I find that the Tenant's other claim for the Landlord t comply with the Act, regulation and/or tenancy agreement is not sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the One Month Notice. Therefore, the Tenant's other claim is dismissed without leave to reapply.

As a side note, the Landlord is encouraged to update their residential tenancy forms, including an updated tenancy agreement, and updated notices to end tenancy, as the forms they used in this matter are nearly a decade old. New forms are available and free to download on the RTB website.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Should the Landlord be awarded an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on December 1, 2017, with a monthly rent of $575.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of $287.50, and no pet damage deposit. The Parties agreed that the residential property is a "55 plus" building, meaning that residents must be 55 years or older.

The Parties agreed that the Landlord served the Tenant with the One Month Notice in person on May 27, 2019. The One Month Notice had an effective vacancy date of June 30, 2019, was signed and dated by the Landlord, gives the address of the rental unit, and is in the approved form. The grounds checked on the One Month Notice as the bases of the eviction were that the Tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

- adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- assigned or sublet the rental unit site without the Landlord's written consent.

The Landlord said:

> There are a lot of details in the pages we submitted. There have been complaints about disturbances, as she runs a daycare, taking care of her grandchildren all week long. We've lost so many tenants because of her unruliness. The building manager has said [the Tenant] fights with her, swears at her, raises her voice. According to the police, when she swears and raises her voice, we're supposed to walk away. She says 'someone is entering my apartment', but we have changed the locks. [The Tenant] keeps costing us tenants. Her visitors park wherever they want and use fire doors. It goes on and on and on and on.

The Landlord said that they have lost tenants who have said they moved out, because of the disturbances caused by the Tenant. The Landlord said that other tenants have also commented on the possibility of moving, if the situation is not resolved.

The Advocate directed my attention to the Landlord's documentary evidence, noting that letters of complaint on pages 10, 11, and 12 and the notes on pages 28 and 29 of the Landlord's submission are dated after the One Month Notice was served on the Tenant. The Advocate also pointed to undated complaint letters on pages 13 – 17.

The Advocate noted that page 40 of the Landlord's evidence contains a warning letter to the Tenant dated April 2018. The Advocate said that this is the only letter the Landlord has sent to the Tenant and it is over a year and a half old. As the Advocate pointed out, this letter says it is the final notice, but that no further action was taken by the Landlord for over a year.

The Advocate said that the Landlord has made allegations of the Tenant running a business, without evidence of a business. He said: "She babysits for her daughter, and there's no prohibition in the tenancy agreement about having your grandchildren visit. It is not a daycare, as that would entail more than one client. There is no evidence of that here."

The Landlord also stated and provided supportive evidence in complaint letters that the Tenant allows her visitors to park wherever they want, rather than utilizing visitor parking, and that her visitors use fire doors, rather than the main entrance to the

residential property. The Tenant said: “I have my own parking stall, but I don’t have a vehicle, so my family can use my stall.”

Further, the Landlord said that the Tenant is rude to other tenants, the building maintenance people, and the building managers. The Landlord played an audio recording that the Tenant had left for the Landlord’s staff. The Landlord said: “This is the way she talks to other tenants, the way she talks to the maintenance people…. I can’t afford to lose tenants.”
The Tenant responded to the audio recording by stating that she had been treated equally badly by the building staff.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 47 of the Act states that 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, or
> >
> > (iii) put the landlord's property at significant risk;

47(1)(e) of the Act addresses when the tenant or a person permitted on the residential property by the tenant engages in illegal activity that:

> > . . .
> >
> > (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

I agree with the Advocate that complaint letters dated after the One Month Notice was submitted do not support the reasonableness of issuing the One Month Notice. However, I find that the post-Notice letters corroborate the other complaints sent to the Landlord prior to service of the One Month Notice. I find that the number and consistency of the complaint letters indicates that a multiple other tenants have been

affected by the Tenant's behaviour to the degree that they have written letters to the Landlord about it. The complaints include that the Tenant babysits for her grandchildren up to seven days a week, from early in the morning to sometimes late at night. Several people noted that the Tenant allows and encourages the children to run and scream in the hallway, as well as in the rental unit. Most complainants have noted that the residential property is a "55 plus" building and that they moved in to ensure they would have peace and quiet.

The Tenant stressed that she consulted the Landlord about being able to have her grandchildren visit her and that children are sometimes noisy. However, I find that consulting the Landlord about allowing grandchildren to visit is different than saying the grandchildren will be at the rental unit as often and for as long as the Tenant acknowledges she cares for her grandchildren there.

Other tenants have also complained that the Tenant's visitors do not respect the assigned parking spots and using the appropriate entrance to the building. I find these matters received less stress in the complaint letters and that the main issue was the noise generated by the Tenant caring for her grandchildren so much of the time.
In terms of the audio recording of the Tenant's comments to the Landlord's staff that was played in the hearing, I found the Tenant to sound like someone who was frustrated by what was going on and who used some language; however, I did not find it to be an example of overly offensive or abusive statements on the Tenant's part.

Based on the evidence before me overall, including that the residential property is designated for people 55 years and older,I find the Landlord has established sufficient cause, pursuant to Section 47(1)(d)(i) of the Act to end the tenancy. I find that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. I find there is no evidence of illegal activity on the part of the Tenant or persons permitted on the residential property by the Tenant, but I find that her behaviour has adversely affected the quiet enjoyment of other occupants of the residential property. This is also addressed in section 28 of the Act, which states that "a tenant is entitled to quiet enjoyment, including, but not limited to, rights to. . . freedom from unreasonable disturbance".

As a result, I dismiss the Tenant's Application to cancel the One Month Notice. I find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession of the rental unit.

Conclusion

The Tenant significantly interfered with and unreasonably disturbed the Landlord and other tenants, including adversely affecting the quiet enjoyment of the other tenants.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on August 31, 2019 at 1:00 p.m. This Order may be filed in the British Columbia Supreme Court and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 14, 2019

Residential Tenancy Branch