Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the "*Act*") to cancel a One Month Notice to End Tenancy for Cause (the "One Month Notice"), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants were present for the hearing as was the Landlord and two family members (the "Landlord"). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants' evidence. The Tenants confirmed receipt of a copy of the Landlord's evidence.

However, the Tenants submitted copies of text messages to the Residential Tenancy Branch the day before the hearing and stated that they served this evidence to the Landlord the day prior to the hearing as well. As stated by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure,* evidence from the applicants must be received by the Residential Tenancy Branch and the respondents not less than 14 days prior to the hearing.

As such, I find that this evidence was not submitted and served in accordance with the *Rules of Procedure.* Therefore, this evidence is not accepted and will not be considered in this decision. This decision will be based on the relevant verbal testimony of both parties, as well as the relevant evidence of both parties that meets the requirements of the *Rules of Procedure.*

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Tenants stated that the tenancy began in March 2007 and that current rent is $2,000.00 due on the first day of each month. They testified that they provided the first and last month's rent as a security deposit.

The Landlord stated that they were unsure of the exact start date of the tenancy but that the tenancy started approximately 10 years ago. They stated that a security deposit in the amount of half a month's rent was paid at the start of the tenancy. The Landlord agreed that current rent is $2,000.00 due on the first day of each month.

The Landlord testified that they served the Tenants in person with a One Month Notice on July 6, 2019. The Tenants confirmed receipt of the One Month Notice on this date.

A copy of the One Month Notice was submitted into evidence and lists the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
    - Put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
    - Jeopardize a lawful right or interest of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site
- 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 effective end of tenancy date of the One Month Notice was stated as August 31, 2019.

The Landlord provided testimony regarding the reasons for the One Month Notice. They stated that they have received multiple letters from the city that the property is unsightly and not in compliance with the city bylaws. They stated that this was first an issue in 2015 and was resolved in approximately 2016. However, they noted that they received another letter in December 2018 regarding the condition of the yard and property of the rental unit.

The Landlords submitted copies of the letters dated August 19, 2015 and two dated December 16, 2018. In the letters dated December 16, 2018, the bylaw enforcement officer writes that the property is not in compliance with the bylaws due to excess vehicles parked on the property and due to the property being 'unsightly'. The letters state in part the following:

> *At the time of our inspection, there was auto parts, wrecked vehicles, scrap metal, plumbing fixtures, discarded furniture, foam, household appliances, plastic pails, sundry rubbish and debris on the Property, making it unsightly.*

In the letter, the bylaw officer further notes that the Landlord has 30 days to comply or the work will be done by the city and charged to the Landlord. It is also noted that fines may be charged due to non-compliance with the bylaws. Photos of the property were submitted into evidence as taken on December 16, 2018.

The Landlord also submitted a copy of the notes from the bylaw officer regarding the inspection on December 16, 2018, as well as the follow-up visits. Notes from April 6, 2019 state that while there was an improvement in the front yard that the backyard remained unsightly. Notes from April 7, 2019 indicate that the Tenant was contacted, and it was explained that there was still a lot of cleanup to take place. Notes from May 17, 2019 indicate the backyard was inspected and states in part the following:

> *There has been only a minor improvement to the condition of the property. The rear yard remained unsightly with scrap metal, auto parts, household appliances, plumbing fixtures, mattresses, wrecked vehicles, sundry rubbish and debris and overgrown brambles. The excess vehicles and wrecked vehicles have not been removed.*

The Landlord also submitted photos taken from the inspections on April 7, 2019 and May 17, 2019 showing numerous vehicles and various items in the yard. The Landlords testified that they provided the Tenants with a letter on May 30, 2019 to advise that should the premises not be cleaned up and in compliance with the bylaws by June 13, 2019 they would be serving an eviction notice. A copy of the letter was submitted into evidence. The Landlord noted that they provided an extra few weeks by not serving the One Month Notice until July 6, 2019.

The Landlords stated that the bylaw officer visited the property again on July 12, 2019 and that the property was still not in compliance. They referenced an email from the bylaw officer dated September 3, 2019 in which the officer states that the file is still active, and the property will be inspected again in October 2019.

The Landlord stated that they have not received a fine from the city yet as the bylaw officer had been understanding regarding the medical and personal issues of the Landlord as well as the difficulty that had occurred in getting the Tenants to clean up the property.

The Landlords stated that they have made multiple attempts to get the Tenants to clean up and referenced text messages sent to the Tenants. They also confirmed that the Tenants were served with a copy of the letters from the city as well as the letter from the Landlord dated May 30, 2019.

The Tenants testified that they had a visit from the bylaw officers on December 16, 2018 and noted that due to the time of year, their access to the backyard was limited to begin any cleanup. They also stated that on December 20, 2018 there was a serious windstorm that knocked down several trees and referenced photos submitted in their evidence showing the damage from the storm. The Tenants noted that the septic tank also banked up in December 2018 which caused further delays. The Tenants stated that due to health issues with one of the Tenants they have been unable to complete the work in a timely manner. They submitted a doctor's letter dated July 10, 2019.

However, the Tenants noted that around January 12, 2019 they were able to begin to move items off the property after the storm debris had been cleaned up. They referenced photos submitted into evidence showing vehicles being taken off the property. The Tenants stated that on February 10, 2019 there was snowstorm in which the yard was covered with 17 inches of snow. They submitted photos to show the amount of snow present.

As the Tenants were able to access the yard again on March 10, 2019 they stated that they began to slowly clean up which was difficult due to ongoing health issues. The Tenants stated that it was April or May 2019 before the backyard was dry enough to move some of the vehicles off of the property.

The Tenants stated that on April 15, 2019 they sent an email to the Landlord's son to inform him that the buses/trailers had been moved off the property and referenced photos of the property that were submitted into evidence.

The Tenants submitted that by May 26, 2019 the backyard was free of all buses and just had some scrap metal left. They referenced photos they submitted to show that the front yard was cleaned up. The Tenants stated that they called the bylaw officer who came by on July 12, 2019 and said that it looks good but there was still about 5 hours of work to go until completion.

The Tenants stated that there was still garbage in the back corner of the property that was not theirs. The Tenants stated that as of July 15, 2019, there was some scrap metal left in the yard as well as some old fridges which were from replacing the fridges in the home. The Tenants stated that they believed they were compliant as of July 6, 2019 and stated that they sent photos on July 12, 2019 to the bylaw officer indicating that they were done. They noted that the Landlord did not reference any visits after May 17, 2019. The Tenant confirmed receipt of the letter from the Landlord on May 30, 2019.

The Tenants apologized for the previous condition of the yard and stated that they did the best they could with the ongoing health issues, but that the yard is now tidy and in compliance.

The Landlords stated that while they were understanding of delays due to weather and health issues, the city had multiple conversations with the Tenants about the need to clean up and the Tenants still did not do so until receipt of the One Month Notice. They also stated that while they are unsure as to the Tenants' claim that some of the garbage in the corner was not theirs, that the city's issue was with the larger items such as the vehicles, mattresses, metal etc. The Landlord stated that they are wiling to provide the Tenants with an extra month to move.

Analysis

Based on the relevant testimony and evidence of both parties, I find as follows:

I accept the testimony of both parties that the One Month Notice was received by the Tenants on July 6, 2019. As stated in Section 47(4) of the *Act,* a tenant has 10 days to dispute a One Month Notice. As the Tenants filed the Application for Dispute Resolution on July 15, 2019, they applied within the time allowable under the *Act.* Therefore, the matter before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure,* when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice as valid.

The Landlord submitted significant evidence regarding contact with the Tenants from both the Landlord and the city bylaw enforcement regarding the condition of the rental unit yard. The Tenants agreed that they were notified of the issue on December 16, 2018 when the bylaw officer visited the property and that they received the letters from this same date that provided 30 days to comply with the bylaws in question.

While the Tenants provided testimony regarding delays in getting the property cleaned up such as weather and health issues, I find that the Landlord provided the Tenants with plenty of time to comply with the bylaws. The Tenants testified as to their belief that the property was in compliance as of July 6, 2019, which is more than 6 months from when they were first asked to comply and notified of the issue.

However, I also accept the evidence from the Landlord that shows that the file with the city is still active with a further inspection scheduled in October 2019. I also note that the Tenants themselves stated that they were told on July 12, 2019 that there was still 5 hours of work to complete.

Although the Tenants stated that some of the items left on the property were not theirs, they did not submit sufficient evidence to establish that they had been in communication with the

Landlord regarding these items or to establish that they were not responsible for the remaining items. I also find, based on the Tenants' testimony, that some of the larger items were note removed from the property until May 2019, which was well beyond the timeframe provided in the letter from the city dated December 2018.

I also note that the Tenants received a letter on May 30, 2019 advising them that the tenancy would end if the property was not in compliance by June 13, 2019 which I find more than reasonable time given that the issue began in December 2018.

The One Month Notice states multiple reasons why the notice was given, however based on the evidence before me, I find Sections 47(1)(iii) (that the tenant has put the landlord's property at significant risk) and 47(1)(e)(iii) (that the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize the lawful right or interest of the landlord) to be the most relevant.

In the letter provided by the city on December 16, 2019, the Tenants were provided until January 16, 2019 to remove the excess vehicles and the debris on the property. By not doing so, the Tenants were not in compliance with the city bylaws and put the Landlord's property at risk with the potential for significant fines and charges from the city. Regardless of whether or not the Landlord has received fines or charges from the city, they have been warned that this is a possibility if the property is determined to not be in compliance with the bylaws.

I reference *Residential Tenancy Policy Guideline 32: Illegal Activities* which includes a violation of municipal law as an "illegal activity" as follows:

> *The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.*

As such, I find that non-compliance with the city bylaws, after being notified of such non-compliance and not resolving the matter within a reasonable time, qualifies as an illegal activity. Had the bylaw officer chosen to fine the Landlord or charge the Landlord for the cost of bringing the property into compliance, I find that the Landlord would have been significantly impacted.

As the Tenants were responsible for cleaning up the property, I find that the Landlord had little control over whether or not the property was brought into compliance or whether fines would be issued. As such, I find that the Landlord's rights were jeopardized when this was not done in a timely manner. As stated, I also find that this put the Landlord's property at risk given the condition of the yard, and the potential for fines to still occur from the city and be placed against the property if not paid.

I agree with the Landlord that the main concern of the bylaw enforcement seemed to be the larger items such as the vehicles, household appliances and scrap metal and not some garbage that may or may not have come from the Tenants. As I have evidence before me that the Tenants did not comply with the letter dated December 16, 2019 and that the property has still not been deemed to be in compliance, I find that the Landlord had cause to serve the Tenants with a One Month Notice.

I also do not find evidence before me that the Tenants were in compliance by June 13, 2019 after being provided additional time to comply by the Landlord. As I have found that the Landlord had valid reason in accordance with Sections 47(1)(d) and 47(1)(e), I do not find it necessary to determine whether the additional reasons on the One Month Notice are valid.

Therefore, as I have found that the One Month Notice dated July 6, 2019 is valid, I dismiss the Tenants' application without leave to reapply. As the Tenants were not successful with their application, I also decline to award the recovery of the filing fee paid for the application.

Upon review of the One Month Notice, I find that the form and content comply with Section 52 of the *Act.* Therefore, as the Tenants' application to cancel the One Month Notice was dismissed, pursuant to Section 55 of the *Act,* I find that that Landlord is entitled to an Order of Possession.

I accept the Landlord's testimony that they are willing to provide an additional month for the Tenants to move and therefore issue an Order of Possession effective on October 31, 2019 at 1:00 pm.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act,* I grant an Order of Possession to the Landlord effective **October 31, 2019 at 1:00 pm.** This Order must be served on the Tenants. Should the Tenants 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: September 18, 2019

Residential Tenancy Branch