



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, LRE, FFT

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 August 22, 2019 ("One Month Notice");
- For more time to apply to cancel the One Month Notice;
- For an order to suspend or restrict the Landlord's right to enter; and
- To recover the cost of their filing fee.

The Tenants, W.U. and A.P., and an agent for the Landlord, S.A. (the "Agent") 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 Tenants and the Agent were given the opportunity to provide their evidence orally and to 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 ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I explained in the hearing that Rule 2.3 authorizes me to dismiss unrelated disputes

contained in a single application. In this circumstance the Tenants 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 not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' for more time to apply for dispute resolution, the request to set aside the One Month Notice, and the recovery of the filing fee at this proceeding. Therefore, the Tenants' other claim is dismissed, with leave to re-apply, depending on the outcome of this hearing.

The Tenants had 10 days to apply for dispute resolution after being served with the One Month Notice. As noted below, the One Month Notice was served on the Tenants on August 22, 2019. Therefore, the Tenant had until September 1, 2019 to apply for dispute resolution to cancel the One Month Notice. However, September 1, 2019 was a Sunday and September 2, 2019 was a statutory holiday, so the Tenants' application deadline was shifted to September 3, 2019. Our records show that the Tenants applied for dispute resolution online on September 2, 2019. Accordingly, I find that the Tenants do not need more time to file for dispute resolution.

In the hearing the Tenant said he served his Application, Notice of Hearing and documentary evidence on the Landlord by leaving these documents in an envelope in the downstairs suite of the residential property on the same day as he applied. I asked the Agent if the Landlord had received the Tenant's package, and she said that he did not. The Agent said the Tenant used an incorrect mailing address for service. The Agent pointed out the Landlord's address for service as set out in the tenancy agreement, which is different than the address to which the Tenant said he served the Application package. The Agent said that the Landlord was not aware that the Tenant had filed a dispute; she said the Landlord was made aware of the dispute when they called the RTB to ask for assistance. As a result of this, I find that the Tenant did not serve the Landlord with the Application and Notice of Hearing in compliance with the Act. I find that this is a basis on which to dismiss the Tenants' Application. However, I also find that the Tenants' Application should be dismissed on the merits, as set out below.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me that she was a property manager for the owner, rather than a registered owner, so I have amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Tenant entitled to More Time to Apply to Cancel the One Month Notice?
- Should the One Month Notice be confirmed or cancelled?
- If the One Month Notice is confirmed, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2019, with a monthly rent of \$2,300.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,150.00, and a pet damage deposit of \$575.00. The Parties agreed that the Tenants have not paid rent for November 2019.

The Agent said that the Landlord's basis for issuing the One Month Notice was because the Tenant was making alterations to the Landlord's property without authorization. The Agent said she advised the Tenant to stop the action, but he would not stop his work. As a result, the Landlord serve the Tenants with the One Month Notice.

The Landlord submitted a copy of the One Month Notice that was dated August 22, 2019. In the hearing, the Agent said that the One Month Notice was served on the Tenant in person on August 22, 2019. The One Month Notice has the rental unit address, and the following grounds for the eviction:

- The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk;
- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property;
- The Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.

The Agent said that the Tenant has removed rocks and a gate, has made a fence unstable, and has dug out dirt on the Landlord's property that edges on a river. The Agent said the Tenant's work has affected the stability of the river bank such that there is nothing holding back any high water that might occur.

In an audio recording submitted by the Landlord, the Agent talks to a witness as they

review the Landlord's property edge. The Agent said that the Tenant's actions have also put a willow tree on the bank at risk. "It's been dug out down around the willow tree." She also said that the Tenant removed rocks starting at the black fence, so there is nothing holding up the fence. "If anyone leans on that and falls in, that's dangerous."

The Landlord submitted photographs of the Tenant doing these actions and audio recording of the Tenant admitting to having done these actions.

The Landlord submitted an excerpt from a document entitled "Juvenile Salmonid Utilization of Selected Habitat Restoration Projects in Southern Interior British Columbia". She said the excerpt describes the riverbank in question:

Canadian Manuscript Report of Fisheries and Aquatic Sciences 2868 Oceans, Habitat and Enhancement Branch British Columbia Interior-South Fisheries and Oceans Canada 985 McGill Place, Kamloops, British Columbia

'Hard' armouring of stream banks using rip-rap (large rock/boulders) has been a technique commonly used to protect property and developments. In high energy, hydraulically active sites rip-rap has been used extensively to provide adequate bank stability. However, this severely reduces the re-establishment of riparian vegetation and natural stream processes. Alternatively, most recent restoration efforts have been using 'softer' techniques which reduce or replace rip-rap with, for example, tree revetments and extensive riparian planting. These sites promote natural stream bank and riparian stability and recovery. In the semi-arid, southern interior region of British Columbia, large rock is now generally used only as a stabilizing component for fish habitat structures. Recent prescriptions for stream bank stabilization incorporate both structurally engineered and biological requirements. They include structural components that provide fish habitat attributes to meet specific salmonid species and life stage requirements, while maintaining the structural integrity and stability of stream banks for property owners. Several reports and technical circulars, such Fish Habitat Rehabilitation Procedures (Slaney and Zaldokas, 1997) and Riparian Assessment and Prescription Procedures (Koning, 1999), provide fish habitat restoration prescriptions and assessment protocols.

In the hearing and in an audio recording submitted by the Landlord, the Tenant said that he was preparing the river bank such that his family could use it as a water slide into the river, with the rocks rearranged for stairs up the riverbank.

In the hearing, the Tenant said that the Fisheries and City Bylaw officers had no

problem with what he was doing. He also said that a Fisheries officer said:

...everything I did was done and done well. I didn't have permission to put that trail at the bottom. I got a ticket for that, but there is no call back for damage done. There's no danger to any of the property or someone else would have come back; there would have been other letters. They were fine with it. Other than not having permission to move the rock, it was fine.

As far as the fence, the pictures show the spot that wasn't finished – it is way better than it was. I reinforced their rotten fence. I fixed all that. This trail that she's showing is not done to the dirt; that's dirt I put on top. Where all the brick is dug out – I sent her texts – that's the worst part. Doing it and having to stop half way through when it's not finished. All this brick in there, that's not true. It was all garbage that was there outside the fence. There was lawn clippings, weeds; all I did was clean it up. That's an old chimney that was in that place.

There is no rip rap in that area on the tree. I picked up two bucketfuls of glass. In order to go down to the river, it had to be cleaned up.

The Tenant did not provide anything from a Bylaw or Fisheries officer indicating that he was allowed to do the work he was doing. Further, the Landlord submitted communications sent to the Tenant directing him to stop the work he was doing to the river bank.

The Landlord submitted the following text dated August 19 from the Agent to the Tenant:

Please provide proof of liability renters insurance and written approval from governing body regarding rocks that have relocated before more work is completed on any area on the riverbank including moving rocks, building steps and any structures. This written approval needs to state that the structural integrity of land protection has not been compromised in any way.

The Landlord submitted an audio recording of the Agent talking to the Tenant, while he is in the middle of making alterations to the riverbank.

Agent: Please have it taken down completely.

Tenant: No, I'm not, no, I'm not. There's nothing wrong with what we're doing here.

Agent: Are you refusing to move all this stuff that you've been asked to remove.

Tenant: What stuff?

Agent: You have by Friday to have all of this cleared out and you've been asked to cease and desist on any touching. . .

Tenant: I've already contacted, bylaw was here today

Agent: I know. You told them you were the owner.

Tenant: No, I didn't tell them I was the owner.

Agent: Well that's what they have on record.

Tenant: No, I didn't . . .

Agent: And they will not be providing permits, because I've spoken with them.

Tenant: It has nothing to do with them.

[discussion about parking in the driveway]

Agent: And you will have this removed, and there will be no further work on the bank.

Tenant: I already got the Fisheries guy fucking coming. I made an appointment, but he's already been here once. I've worked with these guys all the time; you don't seem to get that.

Agent: That doesn't matter; you don't have permission from the Landlord to be contacting Fisheries to do work on his property or on the bank.

Tenant: It's not his property. It's public property.

Agent: It's attached to his property and Fisheries are well aware of this.
In the hearing, the Agent said:

Fisheries and engineers won't come in until this [RTB] dispute is finished. They don't want to come in until the Tenant has been removed, and they can come in and do a proper permit and make sure that everything is fixed properly.

The Landlord asks for an immediate order of possession, so that this can be addressed before winter. If we have high waters the Landlord will lose land; and dealing with the river bank, the water can get behind the rocks now and affect his neighbours - that has not been addressed.

The Tenant said: "All I did was put in some stairs and clean up. This is what I do for a living."

Analysis

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

I find that the undisputed evidence before me is that the Tenant has moved and removed rocks and dirt from the river bank of the residential property without the Landlord's permission.

I find that the Agent presented evidence that the Tenant's actions are detrimental to the stability of the riverbank. I find the Tenant's objective in doing this work is to modify the riverbank so that his family can access the river for their enjoyment. I find that the Landlord has told the Tenant orally and in writing to stop modifying the property, but that the Tenant refuses to stop his project.

I find that the Landlord has provided sufficient evidence to support the validity of the grounds of the One Month Notice. I find that the Tenant has put the Landlord's property at significant risk. I, therefore, confirm the One Month Notice. As the Tenants were unsuccessful in their Application, I decline to award them recovery of the \$100.00 Application filing fee.

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 Tenants. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The Tenants are unsuccessful with their Application to cancel the One Month Notice. I found that they refused to follow the Landlord's demand to stop modifying the riverbank adjacent the Landlord's property; therefore, I found that the Tenants put the Landlord's property at significant risk.

As a result, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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: November 06, 2019

Residential Tenancy Branch