Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELEVATE PERFORMANCE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, MT

Introduction

In this dispute, the tenant sought to dispute a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47 of the *Residential Tenancy Act* ("Act"), and, additional time in which to file an application pursuant to section 66 of the Act.

The tenant applied for dispute resolution on November 7, 2019 and a dispute resolution hearing was held on December 30, 2019. The tenant and the landlord's agent attended the hearing, and both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

While there was some indication on the file that the tenant had retained legal advocates, he said that the "advocates couldn't make it [to the hearing]" and that their office was "closed for the day."

No issues of service were raised by either party.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

It should be noted that section 55 of the Act requires that when a tenant applies to cancel a notice to end a tenancy, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Preliminary Issue: Application for Additional Time

The applicant applied for more time in which to file an application for dispute resolution.

The Notice was served by being posted to the tenant's door of the rental unit on October 22, 2019. As such, it is deemed received on October 25, 2019 as per section 90(c) of the Act, unless there is evidence proving otherwise. The tenant was vague and rather meandering in his testimony as to when he received the Notice.

The Notice was issued under section 47 of the Act, and under section 47(4) of the Act a "tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice."

The tenant had ten days, or until November 4, 2019, in which to file an application. A review of the Residential Tenancy Branch audit notes indicates that the tenant filed his application for dispute resolution on November 4, 2019. Therefore, he filed his application before the statutory deadline and an extension of time is not required. This aspect of his application is thus dismissed without leave to reapply, and the merits of his application concerning the Notice may now be considered.

Issues

1. Is the tenant entitled to cancel the Notice?

2. If he is not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord's agent (hereafter the "landlord") testified that the tenancy began on November 23, 2016 and monthly rent was, and is, $922.50. The tenant paid a security deposit of $450.00. There is no pet damage deposit. The written tenancy agreement, a copy of which was submitted into evidence, states that no pets are permitted in the rental unit unless advanced, written authorization is obtained from the landlord. The lengthy and detailed clause also stated that "This is a material term of this Agreement." The tenant initialed next to the term.

The tenant had, or has, two dogs and one cat, so testified the landlord. The cat has been found wandering into other rental units and causing quite a bit of damage with its spraying. Likewise, both dogs have been wandering around when they are not in the

rental unit. The complex's caretaker has received written complaints from other occupants (copies of the complaints were tendered into evidence).

On August 12, 2019, the landlord gave the tenant a written warning about the animals and asked that they be removed by August 27, 2019. But the complaints and reports continued. There is in evidence a photograph of a large dog on the rental unit's balcony, taken September 5, 2019. On September 15, 2019, another photograph of a smaller, black dog, was taken; the black dog was just outside the rental unit's back door.

On October 18, 2019, the landlord received an email from another occupant regarding additional feline damage to another rental unit. On October 22, the landlord posted the Notice to the tenant's door and also provided a "courtesy copy" to the tenant's legal advocates as per their request. A copy of the Notice was entered into evidence.

Page 2 of the Notice it indicated that it was being issued because the "Tenant or a person permitted on the property by the tenant has [. . .] significantly interfered with or unreasonably disturbed another occupant or the landlord." And, because there was a "Breach of a material term of the tenancy agreement that was not correct within a reasonable time after written notice to do so." The "Details" section of the Notice simply stated that the tenant has two dogs and a cat, and that the animals have caused damage to neighbouring rental unit.

On December 10, 2019, the landlord received an additional email to the effect that the cat was still in the rental unit, because the caretaker had stated as much.

Briefly, the landlord referred to a letter that had been submitted into evidence by the tenant (or, possibly, his legal advocates). The letter is dated October 29, 2019, is from the tenant's two legal advocates, and is addressed to the landlord's agent.

In the letter, the advocates stated that they visited their client's (that is, the tenant's) rental unit on the same date at 10:00 AM, and that they "both observed that there were no pets in the apartment. We also did not observe any smells that indicate animals were present in the near recent past." The advocates asked the landlord to, based on their observations, cancel the Notice.

It was the landlord's position that the advocates only visited on one occasion at a specific time, and that this does not negate the landlord's evidence as to the presence of the animals. Moreover, the landlord explained that the tenant's ex-partner resides next door, and that there is a path between the two rental units through which the

tenant's animals can be quickly moved out of the rental unit should someone unexpectedly visit.

The tenant, a 60-year-old gentleman who has a brain injury and who has raised 3 children, pays the rent, and buys groceries, testified that he only received a notice of rent increase and not the Notice. (At some point in the hearing he did acknowledge receiving the Notice but was unclear as to when.) The tenant's argument as to why the Notice was issued is because the landlord is wanting to start renovations with the rental unit, and that despite living there for 4 years and never having any other issues, the landlord simply wants to get him out by any means necessary. The landlord is "always trying to find a way to kick us out"; the tenant did not elaborate or provide examples of the landlord's other tactics. He also added that the landlord is "racist to[ward] us."

Regarding the animals, the tenant stated that his daughter had to keep the dog, and that while he once had one dog and one cat, he "gave them up." He further testified that other tenants have cats and dogs and that those dogs urinate in the tenant's yard. As to the complaints levelled at him by his neighbours the tenant explained that the three other rental units (and occupants) are on the landlord's side.

While he did not refer to them during the hearing, the tenant (or his advocates) had submitted three letters of support regarding the non-existence of the animals. Two letters were from neighbours and one letter was from the tenant's daughter. All three letters essentially say the same thing: that the tenant no longer has a dog in the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. In this case, the landlord argued that they issued the Notice on two grounds.

Section 47(1)(d) of the Act permits a landlord to end a tenancy where

> 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,

In this case, the landlord's evidence is that the tenant's animals caused damage to neighbouring occupants' rental units. Specifically, the cat spraying. There were several complaints from neighbours about the cat.

While the odd visit by a feline is not to be surprising in any neighbourhood, where animals are generally prohibited this is an unwelcome visit. But, to conclude that a few (or more) complaints about a cat (as was the case here) reaches a level of significant interference or unreasonable disturbance is, I find, a stretch, and not sustainable by the landlord's evidence. Moreover, I note that none of the disturbed neighbours provided any oral or documentary evidence to establish significant interference or unreasonable disturbance. There was no evidence of the extent or significance of the cat-caused property damage, and the landlord did not dispute the tenant's assertion that other occupants were permitted pets.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the first ground on which the Notice was issued.

Turning now to the second ground, the landlord state that the Notice was also issued under section 47(1)(h) of the Act, which states that a tenancy may end when

> the tenant (i) has failed to comply with a material term, and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

In this case, there is documentary, oral, and photographic evidence establishing that the tenant had, or has, a dog or dogs and a cat. The tenant did not dispute that he had such animals, only that he "gave them up," which implies that he did, in fact, have them. Furthermore, the tenant did not dispute that the photograph (of a dog on a balcony) or that the email complaints from his neighbors proves the existence of the animals.

Briefly, I note that the three letters of support from the tenant's two neighbors and his daughter state that there is no longer a dog in the rental unit. None of the letters refer to a cat. The letters were not introduced into evidence by the tenant and not referred to. I

place little weight on them as evidence to support the tenant's denial that such animals lived, or live, in the rental unit.

A copy of a pet complaint letter was submitted into evidence, and to which the landlord referred, that warned the tenant on August 12, 2019 that "As per your lease, no pets are allowed." A reasonable period of time – about two months, in fact – passed between the landlord giving the tenant written notice and the tenant's failing to comply with a material term (and the Notice being issued). Finally, the tenancy agreement's term on no pets stated that it was a material term, the landlord argued that it was a material term, and the tenant did not raise any issue with, or dispute, that this term was material to the tenancy agreement. What is a material term? Essentially, it is a term of a tenancy agreement that, if breached, is enough to terminate the tenancy agreement.

In this dispute, after taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the second ground on which the Notice was issued.

As the landlord has met their onus of proving the second ground on which they issued the Notice, I dismiss the Tenant's application for an order cancelling the Notice without leave to reapply. Thus, the Notice dated October 18, 2019 is upheld.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find that the complies with the requirements set out in section 52.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld then the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

I conclude that the landlord is to be granted an order of possession, which is issued in conjunction with this Decision.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, 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 Act.

Dated: December 30, 2019

Residential Tenancy Branch