Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, FFL/ CNC

Introduction

This hearing was originally convened on November 22, 2019 and adjourned to January 20, 2020 due to time constraints. This decision should be read in conjunction with the Interim Decision arising out of the November 22, 2019 hearing.

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy, pursuant to section 47.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Cause, pursuant to sections 47 and 55;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Service of the landlord's notice of application for dispute resolution and service of the tenants' notice of application for dispute resolution were confirmed by both parties, in accordance with section 89 of the *Act.*

The landlord testified that he served the tenants with his amendment via registered mail but could not recall on what date. The landlord provided Canada Post tracking numbers to confirm these registered mailings. The tracking numbers are on the cover page of this decision. The tenants denied receiving the landlord's amendment. The Canada Post tracking website states that both packages were received by the post office on October 28, 2019 and successfully delivered on October 30, 2019. Based on the Canada Post tracking website, I find that service of the landlord's amendment package was effected on the tenants on October 30, 2019.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
2. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2017 and is currently ongoing. Monthly rent in the amount of $1,700.00 is payable on the first day of each

month. A security deposit of $850.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on August 29, 2019 a One Month Notice to End Tenancy for Cause with an effective date of September 30, 2019 (the "One Month Notice") was posted on the tenants' door. The tenants confirmed receipt of the One Month Notice on August 29, 2019.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
    - 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:
    - damage the landlord's property;
    - 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.

Late Rent

Both parties agree that the tenants were late paying rent on two occasions.

Oil Damage

The landlord testified that he has repeatedly asked the tenants to clean outside of the subject rental property which is filled with tires, car parts, wood and other debris, but the tenants have not complied with his requests. The landlord testified that the tenants' son is operating a chop shop and automobile repair service on the driveway of the subject rental property and that this

business has caused serious damage to the driveway at the subject rental property and puts his property at significant risk.

The landlord testified that oil from the various vehicles the tenants' son has taken apart at the subject rental property has leached into the driveway causing unrepairable damage. The landlord testified that the tenants' son has any number of tires from six to twenty stacked outside the subject rental property and that the tires pose a significant fire hazard. The landlord entered into evidence approximately 60 photographs showing cars being deconstructed on the driveway of the subject rental property and various car parts such as engines sitting on the driveway of the subject rental property. Large dark patches are seen on the ground around the auto parts. The landlord testified that the dark patches are oil. The landlord entered into evidence photographs of large stacks of tires at the subject rental property.

The landlord testified that the driveway is too damaged to be repaired and must be replaced. The landlord entered into evidence three quotes for the driveway in the amount of $9,775.50 and $13,260.00 and $7,166.25. The quotes all mention oil damage to the driveway and the lowest quote states that the damage to the driveway is not repairable. The landlord testified that he is seeking $7,166.25 from the tenants as that is the lowest quote he received. The landlord testified that the driveway is approximately 15 years old.

The tenants testified that their son does not run an automobile repair business on the driveway of the subject rental property but has been re-building his vehicle and that he has taken parts from other vehicles to rebuild his vehicle.

Later in the hearing the tenants testified that their son does fix cars at the subject rental property but that it does not impede the property and has made the tenants more popular in the neighborhood. The tenants testified that some oil has spilt on the driveway, but the driveway had some oil spills on it before they moved in. The tenants testified that the piles of tires are spare tires, not junk.

Patio

The landlord testified that the tenants removed two concrete patio pads measuring 2.5 ft by 2.5 ft from outside the sliding glass doors, without his knowledge or permission. The landlord entered into evidence a quote to have new patio pads installed in the amount of $8,000.00 plus tax and is seeking $3,000.00 of that from the tenants.

The tenants testified that their son was staying in the room with the sliding glass doors and that rain water ran into the room due to the patio pads. The tenants testified that the landlord told them to “do whatever you need to do- just take care of it”, so they removed the patio pads and added in grass. The tenants testified that they agreed to pull up the grass and level the area with paving stones when they move out.

The landlord denied giving the tenants cart blanche authority to make changes to the patio area.

Boat

The landlord testified that the tenants have stored their large unlicensed boat at the subject rental property, contrary to local city bylaws. The landlord testified that on September 3, 2019 he personally delivered a 14 day notice to remove the boat by September 17, 2019 which tenant J.K. signed. The landlord testified that the tenants removed the boat for a few days but then brought it back.

The tenants testified that they moved the boat pursuant to the 14-day notice and that they planned for their son to live in it, but he could not get moorage, so they had to bring the boat back. The tenants testified that they have now removed the boat and will not bring it back.

The landlord testified that he believes the boat will end up on his property again.

Lawn

The landlord testified that the tenants have not cut the grass at the subject rental property. Photographs of long grass were entered into evidence.

The tenants testified that they did not cut the grass because the lawn mower was broken and because it was very hot outside and if they cut the grass short it would turn brown.

Violence

The landlord testified that he attended at the subject rental property on September 3, 2019 to deliver the tenants a notice of rent increase and the 14 day notice to remove the boat from the subject rental property. The landlord testified that after handing tenant L.K. the documents, her son called him a piece of shit and shoved him.

Tenant L.K. testified that she started having a breakdown and needed to sit down and the landlord was blocking her chair so her son shoved him aside so that she could have a seat.

Analysis

Order of Possession

Section 47(1)(d)(iii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

Based on the testimony of both parties and the photographs entered into evidence, I find that a person permitted on the property by the tenants routinely took vehicles apart on the driveway of the subject rental property. I find that oil from the dismantled vehicles leaked from the vehicles onto the driveway of the subject rental property. I find that leaking oil has put the landlord’s property at significant risk and possess a fire and environmental hazard. I therefore find that the

landlord is entitled to end this tenancy, pursuant to section 47(1)(d)(iii) of the *Act* and is entitled to an Order of Possession effective at 1:00 p.m. January 31, 2020.

As I have determined that the landlord is entitled to an Order of Possession pursuant to section 47(1)(d)(iii) of the *Act*, I decline to consider if the landlord is entitled to an Order of Possession under any other subsection of section 47 of the *Act.*

Monetary Order

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the landlord must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the landlord's claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 32(2) of the *Act* states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 32(3) of the *Act* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the tenants breached section 32(2) of the *Act* by allowing vehicles to be taken apart on the driveway of the subject rental property which resulted in oil to leaking onto the driveway.

Residential Tenancy Branch Policy Guideline 40 (P.G. 40) states:

> This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

P.G. 40 states that the useful life of concrete and asphalt driveways is 15 years. The landlord testified that the driveway at the subject rental property is approximately 15 years old. I find that the useful life of the landlord's driveway is over; however, I find that the landlord was still deriving a benefit from the driveway.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that while the useful life of the driveway was expired, the oil spilled on the driveway constitutes an infraction of a legal right owed to the landlord under section 32(2) of the *Act*. I therefore find that the landlord is entitled to nominal damages in the amount of $500.00.

Based on the testimony of both parties, I find that the tenants did not ask the landlord for permission to remove the patio pads. I find that the tenants have not proved, on a balance of probabilities, that the landlord gave them unfettered authority to make whatever changes they saw fit in the patio area.

The landlord did not provide any evidence regarding the age of the patio pads the tenants removed. It is the landlord's obligation to present all evidence, including the age of the patio when claiming damage to it. Without this evidence, I am not able to complete a useful life calculation on the patio squares and the landlord has therefore not proved the value of the loss he is claiming.

Nonetheless, I find that the landlord did suffer a loss when the tenants removed the patio pads. I find that the removal of the patio pads constitutes an infraction of a legal right owed to the landlord. I therefore find that the landlord is entitled to nominal damages in the amount of $250.00.

As the landlord was successful in his application for dispute resolution, I find that he is entitled to recover the $100.00 filing fee from the tenants, in accordance with section 72 of the *Act.*

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of $850.00 in satisfaction of his monetary claim against the tenants.

Conclusion

The landlord is entitled to retain the tenant's security deposit in the amount of $850.00.

Pursuant to section 55 of the *Act,* I grant an Order of Possession to the landlord effective at **1:00 p.m. on January 31, 2020,** which should 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: January 21, 2020

Residential Tenancy Branch