Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenants under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the "One Month Notice"); and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant J.M., Legal Counsel for the Tenant, the Landlord, and a Support Person for the landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package, including a copy of the Application and notice of the hearing. I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") as outlined in the Preliminary Matters section below; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Matter #1

The Landlord confirmed receipt of the Tenant's documentary evidence, except copies of an online conversation, receipts for tree cutting and garbage removal and a copy of a previous decision from the Residential Tenancy Branch (the "Branch") in relation to this tenancy, by courier on approximately March 9, 2020. The Tenant confirmed receipt of the Landlord's documentary evidence through their mail slot on March 12, 2020. I have therefore accepted the documentary evidence exchanged by both parties for consideration in this matter.

In addition to the documents served on the Landlord by the Tenant as described above, the Tenant submitted copies of an online conversation, receipts for tree cutting and garbage removal and a copy of a previous decision from the Branch in relation to this tenancy to the Branch on March 23, 2020, and March 24, 2020. Section 2.5 and 3.14 of the Rules of Procedure state that to the extent possible, the applicant should submit to the Branch and serve on the respondent copies of all other documentary and digital evidence to be relied on in the proceeding at the same time as the application, and that in any event, evidence the applicant wishes to rely on in the hearing must be received by the respondent and the Branch not less than 14 days before the hearing.

Section 3.17 of the Rules of Procedure states that evidence not provided to the other party and the Branch in accordance with the *Act* or Rules of Procedure may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. It also states that the arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

In the hearing the Tenant acknowledged that they have not served the Landlord copies of the online conversation, receipts for tree cutting and garbage removal or a copy of a previous decision from the Branch in relation to this hearing. The Tenant stated that they did not serve the online conversation between themselves and another tenant of the Landlord at the time they served the Landlord with the Notice of Dispute Resolution Proceeding package or the bulk of their documentary evidence as they only recently

remembered the conversation and also did not want to reveal the name of the other person. The Tenant stated that they also did not serve the Landlord with the receipts for tree cutting and garbage removal as they were intending to file a subsequent monetary application in relation to these costs but have yet to do so.

As stated above, evidence not provided to the other party and the Branch in accordance with the *Act* or Rules of Procedure may not be considered if the party cannot demonstrate to the arbitrator that it was not available at the time their application was made or when they served and submitted their evidence. While I appreciate that the Tenant only recently remembered the online conversation and withheld the receipts as they originally intended to file another monetary application, it is clear to me from the Tenant's testimony in the hearing and the documents themselves, that this evidence existed well before the date the Application was filed. As a result, I find that these documents do not qualify as new evidence. Further to this, it is incumbent upon parties to prepare in advance for their hearings, including gathering and exchanging all relevant evidence, and I am satisfied that this evidence could have been procured by the Tenant and exchanged with the Landlord in accordance with the timelines set out in the *Act* and the Rules of Procedure if the Tenant had exercised reasonable due diligence in preparing for their Application and the hearing.

While I also appreciate that the Tenant wished to preserve the anonymity of another person by withholding a copy of the online conversation from the Landlord, the ability to know the case against you, including the identities of those providing evidence against you, and to provide evidence in your defense are fundamental to the dispute resolution process. The Tenant acknowledged in the hearing that they did not serve the Landlord with copies of the online conversation or receipts and as I have already found that these documents do not meet the requirements to be considered new evidence, I therefore find that it would be both extremely prejudicial to the Landlord and a breach of both the principles of natural justice and the Rules of Procedure to accept this evidence for consideration in this matter and have therefore excluded it from consideration.

However, as both parties acknowledged previous receipt of the Branch decision dated June 6, 2019, and this decision forms a part of the Branch record in relation to this tenancy, I find that the acceptance of this document does not unreasonably prejudice the Landlord and I have therefore accepted it for consideration in this matter.

Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Matter #3

Although the Tenant submitted several receipts in relation to garbage removal and tree cutting, as stated above, these documents have not been accepted for consideration in this matter as they do not qualify as new evidence and were not served on the Landlord.

Section 6.2 of the Rules of Procedure states that the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. In order to amend an Application prior to the hearing to add, remove, or alter a claim, an Amendment to an Application for Dispute Resolution ((an "Amendment") must be received by the Branch and served on the respondent in accordance with the Rules of Procedure. No Amendment was received by the Branch or served on the Landlord in relation to a monetary claim from the Tenant pursuant to section 4.1 of the Rules of Procedure. Further to this, I did not find it appropriate to amend the Application in the hearing pursuant to section 4.2 of the Rules of Procedure. As a result, the hearing proceeded only on the basis of the Tenant's Application seeking cancellation of the One Month Notice and recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant's Application seeking cancellation of the One Month Notice is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The six month fixed-term tenancy agreement in the documentary evidence before me states that the tenancy began on January 1, 2019, that rent was $2,200.00 at the start

of the tenancy, and that rent is due on the first day of the month. Neither party disputed the terms of the tenancy agreement in the hearing.

Although there was disagreement between the parties about some of the details of an incident resulting in the loss of electricity to the rental unit and who was responsible for a delay in the reconnection of electricity, there was agreement between them that a tree from a neighbouring property fell on an electric line connected to the rental property and that there was a delay in reconnecting the electrical to the rental unit. As the disconnection and reconnection of the electrical is background information and not the reason for which the One Month Notice was served, I have not provided more fulsome details on that matter.

The Landlord stated that on January 13, 2020, they served the Tenant a One Month Notice by registered mail and provided me with the registered mail tracking number. The One Month Notice in the documentary evidence before me is signed and dated January 8, 2020, has an effective date of February 9, 2020, and states the following reasons for ending the tenancy:

- 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;
- The Tenant or a person permitted on the residential property by the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant;
- The Tenant or a person permitted on the residential property by the Tenant has put the Landlord's property at significant risk;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has caused or is likely to cause damage to the Landlord's property
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord; and
- The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

In the details of cause section of the One Month Notice the Landlord wrote that on October 26, 2019, as the result of a power outage, the Tenant threatened to kill them and broke into their home causing significant damage valued at $3,000.00. The

Landlord also wrote that the City of Vancouver has ordered them to stop renting the unit by November 15, 2019.

The Tenant denied that the One Month Notice was served by registered mail and stated that it was simply put in their mailbox by the Landlord on January 13, 2020, which is the same date that they received it.

In the hearing the Landlord stated that they received a letter from the City of Vancouver Property Use Inspector dated October 16, 2019, in which they were ordered to cease renting the property by November 15, 2019. In support of this testimony, the Landlord provided me with a copy of pages 3/4 and 4/4 of this letter.

The Tenant and their Legal Counsel denied that there is an order from the City of Vancouver requiring the Tenant to vacate the rental unit.

The Landlord stated that on October 26, 2020, as a result of the above noted electrical disconnection and reconnection issues, the Tenant attended their home a few houses away from the rental unit, threatened to kill them and then broke into their home causing approximately $3,000.0 worth of damage to the front door, the interior of the home, and the outside gate. The Landlord stated that they and their child were home at the time and were very frightened for their safety. As a result, the Landlord stated that the police were called and the Tenant was briefly arrested. In support of their testimony the Landlord provided 9 photographs of damage claimed to have been caused by the Tenant and a police file number.

The Tenant acknowledged attending the Landlord's property in relation to the electrical disconnection and reconnection issues, however, they categorically denied uttering any threats and stated that the only damage cause by them to the Landlord's home is a small hole in the front door. The Tenant acknowledged kicking the front door out of frustration with the Landlord and stated that they did not expect to damage the door, however, the door was flimsy and hollow. The Tenant stated that they then recognized that what they had done was wrong and that the situation was getting out of hand and immediately left the property. The Tenant stated that they too called the police to report that the Landlord was refusing to have their electricity and heat reconnected and provided me with their police file number. The Tenant also stated that aside from this one incident, they have always been civil with the Landlord. In support of this testimony the Tenant provided copies of text messages between themselves and the Landlord.

The Tenant and their Legal Counsel stated that the Tenant attempted to obtain copies of the police report related to their police file number for this hearing but were advised that their FOI request would take in excess of 30 days, at which point the date of the hearing would already have passed.

Although the Tenant initially denied being arrested due to the Landlord's call to the police, the Tenant ultimately admitted that they were briefly handcuffed by police but reiterated that they were not in fact arrested or taken to the police station and that no charges have been laid. When asked, the Landlord confirmed that they have not pursued any charges against the Tenant for the damage to their property or for issuing threats and that they made no attempt to obtain a copy of the police report related to their police file number in preparation for the hearing.

Legal Counsel for the Tenant stated that section 6.6 of the Rules of Procedure states that the standard of proof in this hearing is a balance of probabilities and that the Landlord bears the burden of proof in this matter. Legal Counsel for the Tenant reiterated that the Tenant has denied threatening the Landlord or breaking into the Landlord's property as well as causing most of the damage claimed by the Landlord. Legal Counsel for the Tenant also argued that the text messages provided by the Tenant show that the Tenant has otherwise been civil towards the Landlord. Further to this, Legal Counsel for the Tenant argued that the Landlord has failed to meet the burden of proof in establishing that they have grounds for ending the tenancy pursuant to section 47 of the *Act*, that the small amount of damage caused by the Tenant to the Landlord's front door is insufficient to warrant the end of a tenancy, and that in any event, eviction during the current pandemic constitutes a public health risk. As a result, Legal counsel for the Tenant stated that the One Month Notice should be cancelled, and the tenancy should continue.

The Landlord responded to the arguments presented by the Tenant's Legal Counsel by stating that the Tenant has been untruthful in the hearing and that they have sufficient grounds to end the tenancy due to the damage caused to their home by the Tenant, the threat uttered by the Tenant, and the order from the city requiring them to stop renting out the property. As a result, the Landlord stated that the One Month Notice is valid and that the tenancy should end on March 31, 2020, as they have accepted rent from the Tenant for use and occupancy of the rental unit up to an including that date.

Analysis

Section 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, and that the onus to prove that a Notice to End Tenancy is valid falls on the landlord when a tenant applies to cancel a Notice to End Tenancy. As a result, I find that it was the Landlord's obligation to satisfy me of the validity of the One Month Notice in the hearing.

Although the parties disputed the exact date and manner in which the One Month Notice was served on the Tenant, ultimately the Tenant acknowledged receipt of the One Month Notice via their mailbox on January 13, 2020. As a result, I find that the Tenant was served with the One Month Notice on January 13, 2020, in accordance with section 88 (f) of the *Act*.

Although the Landlord sought to end the tenancy pursuant to section 47 (1) (k) of the *Act*, I am not satisfied by the Landlord that the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. The portions of the letter from the City of Vancouver provided for my consideration by the Landlord do not state that the rental unit must be vacated. What they say is that the Landlord is renting out the property without a proper business license in contravention of the city bylaw and that to avoid further action, they must apply for a business licence **OR** cease renting the property within 30 days of the date of the letter.

When asked, the Landlord acknowledged that they have not applied for a business license allowing them to rent the property and I find that that have acted unreasonably in failing to do so. Further to this, there is no evidence that further action in relation to this letter was taken by the city. As a result, I find that the Landlord has failed to satisfy me that the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

Having made this finding, I will now turn to the other grounds listed on the One Month Notice for ending the tenancy. Although the Landlord sought to end the tenancy under sections 47 (1) (d) (i), (ii), and (iii) and 47 (e) (i) and (iii), they relied upon the same two incidents to substantiate all 5 grounds. Specifically, the Landlord stated that the Tenant had threatened to kill them and that the Tenant had broken into their house causing $3,000.00 worth of damage. Although the Landlord provided me with a police file number and submitted several photographs of damage to their home allegedly caused

by the Tenant, the Tenant denied causing any of the damage to the Landlord's home or property except a small hole to the front door and denied uttering any threats. The Landlord did not submit a copy of the police report related to their police file number and acknowledged that they were not pursuing charges against the Tenant. Further to this, the Landlord did not call any witnesses or provide any other type or corroboratory evidence to substantiate that the Tenant threatened them or to establish that the damage shown in the photographs was in fact caused by the Tenant. As a result, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the Tenant either uttered a threat against them or caused damage to any part of the Landlord's property except the front door.

The ending of a tenancy is a very serious matter, and although the Tenant has acknowledged causing some damage to the Landlord's front door, I do not find that the damage to the front door show in the photographs or described in the hearing constitutes sufficient cause to end the tenancy pursuant to the above noted sections of the *Act*. As a result, I grant the Tenant's Application seeking cancellation of the One Month Notice and order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*. Pursuant to section 72 of the *Act*, I also grant the Tenant authorization to withhold $100.00 from the next months rent, or to otherwise recover this amount for the Landlord, in recovery of the filing fee.

Conclusion

I grant the Tenant's Application seeking cancellation of the One Month Notice and order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I also grant the Tenant authorization to withhold $100.00 from the next months rent, or to otherwise recover this amount for the Landlord, in recovery of the filing fee.

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: April 9, 2020

Residential Tenancy Branch