Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hume Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDCT OLC

Introduction

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

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

LK appeared for the tenants in this hearing. JC, agent for the landlord, appeared with the owner of the building LH as well as SB. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions. The hearing exceeded the 60 minutes allotted, but was extended a further 40 minutes to allow both parties the full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the outset of the hearing, the name of one of the named landlords named in this dispute was clarified to be the landlord's property manager SB, who was in attendance. As neither party was opposed, SB's name was amended on the tenants' application to reflect her proper name.

The landlord confirmed receipt of the tenants' amended application for dispute resolution hearing package ("Application") and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' amended application and evidence package.

The tenants confirmed receipt of the 1 Month Notice dated June 30, 2020, which was placed in the tenant's mail slot or box on that date. In accordance with section 88 and 90 of the Act, I find the tenants deemed served with the 1 Month Notice on July 3, 2020, 3 days after service.

Preliminary Issue – Service of the Landlord's Evidence

The landlord testified that they had served their evidence package by way of registered mail to the tenant. The landlord provided the tracking number for their package. The tenant testified that they have not received any packages from the landlord containing these materials, and therefore did not have the opportunity to review the evidence submitted by the landlord for this hearing. The tenant testified that her unit did not have a buzzer, and she often had trouble receiving packages.

Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. In this case, although the landlord did provide proof that they had attempted to serve the tenant with their evidentiary materials, in light of the disputed testimony, I am unable to determine whether the tenants did indeed receive notification that a package was sent to them. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. I find the admission of the landlord's evidence would be prejudicial to the applicants. On this basis I find that there is undue prejudice by admitting the landlord's written evidence. For these reasons, I exercise my discretion to exclude the landlord's written evidentiary materials for this hearing.

Both parties confirmed that the landlord had filed a separate application, with a hearing scheduled for August 13, 2020 to deal with the same 1 Month Notice to End Tenancy. The landlord considered the options available to them, and confirmed that they wished to proceed today with this scheduled hearing, and present their evidence by way of sworn testimony. The hearing proceeded as scheduled.

Preliminary Issue – Tenant's Other Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice and the continuation of this tenancy are not sufficiently related to the tenant's application for monetary compensation and other claims. As the time allotted is not sufficient to allow the tenant's monetary claim to be heard along with the application to cancel the 1 Month Notice to End Tenancy, I exercise my discretion to dismiss the portions of the tenants' application unrelated to the 1 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable time lines.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This tenancy began on November 1, 2019, with monthly rent set at $1,050.00, payable on the first of every month. The landlord collected a security deposit in the amount of $525.00, which the landlord still holds.

The landlord served the tenants with a 1 Month Notice dated June 30, 2020, providing the following grounds:

1. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords;
2. The tenants or a person permitted on the property by the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlords;
3. The tenants or a person permitted on the property by the tenants have put the landlord's property at significant risk;
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord testified that they are seeking the end of this tenancy as the tenants have continued to show a disregard for the landlord, the landlord's staff, and other tenants by allowing the tenants' guests to attend and enter the property, and engage in behaviour

that has caused a significant disturbance and interference with the landlord's ability to perform their daily duties.

The landlord provided several examples of the tenants' behaviour, and behaviour of her guests, that have necessitated the issuance of the 1 Month Notice. The main issue the landlord brought up is related to SB, who is the property manager for this building, and her dealings with the tenant LK and her guests, primarily LK's daughter.

The landlord testified that the tenant would allow her guest to enter the suite through the window or balcony, and the tenant's daughter has been found in common areas such as the laundry room. The landlord testified that they had addressed this issue with the tenant, and the tenant was provided with a letter on March 18, 2020, confirming that the tenant's daughter was not allowed on the property, and that a violation of the letter would result in the attendance of police. The landlord testified that despite the tenant's reassurance, and the issuance of the 1 Month Notice on June 30, 2020, the daughter continues to attend the property, with the latest incident taking place on July 6, 2020 when she was drinking on the front lawn with two other parties.

The landlord testified that the tenant has shown intimidating and aggressive behaviour towards her in the course of her regular duties as a property manager, which includes enforcing the rules. The landlord testified that she has regular contact with the tenant, and feels she cannot perform her duties without intimidation from the tenant.

The landlord provided an example of an incident that took place on June 14, 2020 when she had discovered that the tenant had allowed her daughter to park her car without any plates. The landlord warned the tenant that if she did not move the vehicle, that it would be towed the next day, but the tenant refused to comply. The landlord testified that two calls to the police have been made, on June 24 and 29, 2020 because SB was afraid due to threats by the tenant while performing her regular duties.

The tenant responded that SB was the person who was harassing her, and her guests. The tenant testified that she was the party who had requested that the landlord issue the letter dated March 18, 2020, prohibiting her daughter from attending the property. The landlord testified that she was trying to assist her daughter, who is now obtaining treatment. The tenant does not dispute that her daughter was in the laundry room, nor does she dispute that she has allowed the daughter to stay over as a guest on occasion in order to assist her. The tenant testified that she had given permission to the landlord to contact the police if her daughter attended the property.

The tenant does not dispute that she had allowed guests to enter the rental unit through the balcony as she did not have a buzzer, and she could not get up to open the door. The tenant also does not dispute that her guests have used the window to access the rental unit, but that has stopped. The tenant testified that SB was intimidating her guests, even though she had the right to have guests visit her. The tenant testified that other tenants have been harassed by SB as well.

Analysis

I have considered the concerns brought up by both parties, as well as the evidence that was provided for this hearing. It is clear from the testimony and evidence that the relationship between both parties has deteriorated significantly. Despite this deterioration of the relationship between both parties, the landlord still has the burden of proving that they have cause to end this tenancy on the grounds provided on the 1 Month Notice, as allowed by section 47 of the *Act.*

SB testified that the tenant has interfered with her ability to perform her functions as a landlord and property manager, and considered the tenant's behaviour to be intimidating to the extent that she cannot perform her daily functions as required. The tenant argued that the landlord and their staff such as SB were in fact the parties who have acted in an intimidating and harassing manner towards her and her guests.

In light of the conflicting testimony between both parties, I will focus on the undisputed facts rather than the interpersonal difference between the parties.

I note that the tenant provided undisputed testimony that she had requested the letter dated March 18, 2020. Furthermore, the tenant did not dispute that despite that the letter clearly states that her daughter was not to attend on the property, but the tenant has continued to allow her daughter to do so. I find that the tenant's own request for this letter acknowledges the fact that the attendance of her daughter on the property poses a problem for all parties. I find that the tenant's actions to be inconsistent with her agreements with the landlord, as she not only has allowed her daughter to continue attending on the property, but she has failed to take responsibility to ensure the compliance of her daughter who is a guest. I note that it is not the landlord's responsibility to ensure the compliance of their guests, but the tenant's.

I find it also undisputed that the tenant had allowed her daughter to park her vehicle on the property without proper display of insurance. Although the vehicle's plates may have been removed, I find that the SB was simply acting in the course of her duties as a

property manager when requesting that the tenant remove the vehicle by the next day. I find that SB's request to be reasonable as she gave the tenant time to remove her vehicle. I find the tenant's response to be unreasonable, and shows a continued disregard for the landlord's rules, and SB's role as property manager in enforcing these rules.

Although less serious in nature, I find that the tenant and her guests, have engaged in other behaviour that shows a disregard for the landlord their staff. The tenant did not dispute that she had allowed her guests to enter the rental unit through the balcony or window. Although the tenant provided an explanation, I do not find this explanation to justify these actions as the tenant and her guests have access to a proper entrance to the rental unit. As stated above, the tenant is responsible for the behaviour of their guests, and these incidents require the ongoing attention of SB and the landlord. In this case, I find that the SB had the right to address this issue as she did not know the identity of the parties accessing the rental unit through the window and balcony, and SB has a duty to ensure the safety and security of all residents.

Although the tenant has expressed concerns about the landlord's behaviour towards her and her guests, as I stated above, I have focused on the undisputed facts. I find that the tenant's actions have significantly interfered with SB's ability to perform her daily functions as a property manager and agent for the landlord. I find that her primary duty is ensuring the well-being and safety of all residents, and landlord's property. Although the tenant testified that other residents have been harassed by SB, I am not satisfied that these parties have provided sworn testimony or statements to sufficiently support this. I find that the tenant has failed to take responsibility for her guests' behaviour, and has instead shifted this burden to SB and the landlord. I find that the tenant's actions have in turn contributed to the growing tension between SB and the tenant as SB is put in the difficult position of having to ensure and enforce compliance of her guests. A clear example of this is when SB was placed in the unfortunate position of having to deal with the daughter's vehicle.

I find that that the landlord has provided sufficient evidence for me to conclude that the tenant and her guests have significantly interfered with and unreasonably disturbed the landlord, and on more than one occasion. I find that the tenant has failed to acknowledge her responsibility as a tenant, and the guests she has allowed on the property. I am not confident that the tenant and her guests will not cause further disturbance in the future.

I find that the landlord has justified the end of this tenancy on the basis of significant disturbance and interference by the tenant and her guests, and accordingly I dismiss the tenant's application to cancel the 1 Month Notice dated June 30, 2020.

Section 55(1) of the *Act* reads as follows:

> **55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
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> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
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> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act,* which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession. As the tenants were served the 1 Month Notice on June 30, 2020 by way of posting or leaving the notice in the tenants' mail box or mail slot, the tenants are deemed to have been served 3 days after the 1 Month Notice was served on the tenant, on July 3, 2020 pursuant to sections 88 and 90 of the *Act*. Section 47(2) of the *Act* requires that the effective date of the 1 Month Notice must not be earlier than one month after the date the notice is received, and this effective date must fall on a day before the day in the month that rent is payable under the tenancy agreement. Section 53 of the *Act* states that incorrect effective dates are automatically changed. Accordingly, the corrected, effective date of the 1 Month Notice is August 31, 2020. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by August 31, 2020, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

As both parties consented in the hearing, and as the 1 Month Notice dated June 30, 2020 is dealt with, the August 13, 2020 hearing is cancelled.

I dismiss the tenants' application to cancel the landlord's 1 Month Notice. I find that the landlord's 1 Month Notice is valid and effective as of August 31, 2020.

I grant an Order of Possession to the landlord effective August 31, 2020. Should the tenant and any other occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The remainder of the tenants' application is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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: July 17, 2020

Residential Tenancy Branch