



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PSF, OLC, CNC**

Introduction

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

- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62;
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62; and
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. As the tenant did not attend, she did not present evidence regarding the merits of her claim for me to consider. This hearing was conducted in the absence of tenant.

Preliminary Issue

The tenant seeks to cancel a notice to end tenancy.

Rule 2.5 of the Residential Tenancy Branch Rule of Procedure states:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- ***a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy;*** and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

The tenant failed to supply a copy of the Notice to End Tenancy, in contravention of Rule 2.5. The landlord assumed the tenant had already provided a copy for the hearing and sought to provide me with a copy when he discovered I was not given one. I allowed the landlord's request as I determined the tenant's position would not be prejudiced and the principles of natural justice would not be breached if I were to allow the landlord to provide me with it. The landlord was given until midnight the day of the hearing to provide me with a copy of the notice to end tenancy.

Preliminary Issue

The landlord has an Application for Dispute Resolution set for hearing in October 2020, related to non-payment of rent. The landlord sought to have his Application for Dispute Resolution heard during today's hearing. I declined the landlord's request as the tenant's right under the Residential Tenancy Branch Rules of Procedure allowing the tenant up to 7 days prior to the hearing to provide evidence would be jeopardized. I advised the landlord that only the merits of the tenant's Application for Dispute Resolution would be heard today.

Issue(s) to be Decided

Should the One Month Notice be upheld or cancelled?

If cancelled, should the landlord be required to provide services or facilities?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The applicant/tenant did not attend the hearing to present any evidence.

The landlord provided the following undisputed testimony. The rental unit is the lower unit in a detached house with an upper and lower unit. The landlord lives in the upper unit with his wife and his mother.

Last summer, the tenant started yelling and screaming at the landlord's gardener at approximately 10:00 a.m. because the gardener made noise loud enough to wake the tenant. The gardener felt afraid for her safety and complained to the landlord. The landlord felt the tenant's behaviour was uncalled for, since whatever noise the gardener was making was done during regular hours when it's unreasonable for the tenant to be asleep.

On October 7, 2019, the tenant verbally harassed the landlord's daughter when she was visiting with her young children. The tenant swore at the landlord's daughter and called the daughter various names because the daughter had parked in the driveway. The tenant also swore at the landlord's wife when the landlord's wife asked the tenant what the matter was. The landlord's daughter provided a signed letter advising of this complaint.

On June 24, 2020, the tenant once again became upset by yelling, screaming and swearing at the landlord and his family once again over a parking incident. According to the landlord, the tenant felt the landlord's daughter had parked too close to the wall. A video recording of the incident on June 24th was provided as evidence by the landlord. In the video, the tenant can be seen trying to physically slap the daughter's cell phone out of her hand while the daughter videotapes the altercation. The tenant is also seen swearing and screaming directly at the landlord, however this arbitrator was unable to understand what was being said as the tenant was speaking in a foreign language.

The landlord testified that on June 24th, his daughter heard the tenant tell her children that if the daughter's car gets scratched while in the driveway it's OK. Later that evening, the daughter car suffered from a key scratch, however no photo of the key scratch was provided into evidence by the landlord. The landlord submits that his family and children feel scared and unsafe in their own home. The landlord testified that he and his family are scared that, due to the tenant's unpredictable and erratic behaviour, the tenant may further damage their personal property.

Second, the tenant has threatened to go on social media and make disparaging remarks about the landlord in an attempt to 'defame' him. The landlord submits that he is a businessman in good standing in the community who would suffer harm to his reputation should the tenant follow through with the threat.

Lastly, the landlord testified that the tenant's brother used to stay at the rental unit, on and off. The landlord brother had been taken away from the police at one point in 2019 for violence while under the influence of alcohol. The landlord was unable to recall the exact date and the landlord does not have exact details as to the events leading up to the brother's arrest. The landlord has seen the tenant's brother attend at the rental unit as late as this last week. The brother's continued presence at the house makes him, his wife and mother scared for their safety due to the tenant's brother's violent behaviour.

On June 26, 2020 at 4:45 p.m., the landlord served the tenant with a One Month Notice To End Tenancy for Cause by posting it to the tenant's door. The landlord testified that a witness/neighbour, GM saw him post it to the door. The effective (move-out) date stated on the Notice was July 31, 2020. The reasons for ending the tenancy were:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
4. 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;
5. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
6. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Attached to the landlord's One Month Notice to End Tenancy for Cause was a detailed description of the reasons for evicting the tenant, providing similar to the reasons stated earlier.

The tenant filed an Application for Dispute Resolution to dispute the Notice on June 29, 2020.

Analysis

In accordance with sections 88 and 90 of the Act, the tenant is deemed to have received the Notice on June 29, 2020, three days after it was posted to the tenant's door.

Section 47 of the Act provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice. I find the tenant failed to dispute the landlord's Notice within 10 days.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

The tenant did not attend the hearing to dispute the notice. Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

While the tenant did not provide any evidence to refute the landlord's notice; the landlord provided undisputed testimony together with corroborative evidence to prove the reasons he provided for ending the tenancy were valid. I accept the landlord's evidence that the tenant significantly interfered with or disturbed the landlord on two separate occasions, on October 7, 2019 and June 24, 2020. I find the June 24th videotaped evidence provided by the landlord's daughter particularly compelling regarding the tenant's significant interference and unreasonable disturbance to the landlord and his family (the first of six reasons for ending the tenancy stated on the Notice). As such, I uphold the landlord's One Month Notice To End Tenancy for Cause. None of the remaining five reasons stated on the Notice require analysis, since the first reason for ending the tenancy was found to be valid.

Section 55 states 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 the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have examined the Notice and find it complies with form and content provisions of section 52. The landlord is entitled to an Order of Possession effective July 31, 2020, the effective date shown on the One Month Notice To End Tenancy for Cause.

As this tenancy is ending, the remainder of the tenant's application is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective July 31, 2020. This order must be served upon the tenant in accordance with the Act. Should the tenant or anyone on the premises 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: July 27, 2020

Residential Tenancy Branch