Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RP, LRE, RR, OLC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant of section 65 of the *Act;*
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. Landlord K.D. attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 landlord K.D. and I were the only ones who had called into this teleconference.

Landlord K.D. testified that the tenant served her with his application for dispute resolution via regular mail which she received on or about July 20, 2020. While service by regular mail is not an approved method of service of the tenant's application for

dispute resolution under section 89 of the *Act,* pursuant to section 71 of the *Act*, I find that the landlords were sufficiently served with the tenant's application because they confirmed receipt of it.

Preliminary Issue- Tenant's Application

Rule 7 of the Rules of Procedure provides as follows:

> **7.1 Commencement of the dispute resolution hearing**
> The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states 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.

Based on the above, in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

Upon review of the One Month Notice to End Tenancy for Case (the "One Month Notice"), I find that it complies with section 52 of the *Act.* As the tenant's application was dismissed, I must consider if the landlords are entitled to an Order of Possession.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Background and Evidence

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

Landlord K.D. provided the following undisputed testimony. This tenancy began on May 1, 2020 and is currently ongoing. Monthly rent in the amount of $1,800.00 is payable on the first day of each month. A security deposit of $900.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Landlord K.D. testified that the One Month Notice dated June 24, 2020 with an effective date of July 31, 2020 was posted on the tenant's door on June 25, 2020. The One Month Notice was entered into evidence.

Landlord K.D. testified that the tenant caused significant problems since the beginning of the tenancy, but the landlords did not start issuing caution notices to the tenant until June because the caution notices could not be enforced due to the prohibition on evictions

Landlord K.D. testified that the tenant breached sections 1 and 5 and of the tenancy agreement addendum. Section 1 states:

> Any changes made to the house, structures or land must be under the approval o of the landlord.

Section 5 states:

> Vehicles. Only vehicles listed in the tenancy application and no other vehicles may be parked, but not stored, on the residential property. The parking areas are to be occupied by vehicles which are in operating condition, currently licensed, and insured for on-rad operation. Motor vehicle or other repairs must not be done in the rental unit or on the residential property. No recreational vehicles, campers or trailers can be parked on stored on the property.

Landlord K.D. testified that on June 3, 2020 she sent the tenant an email after he removed a hood fan without permission. The June 3, 2020 email stated in part:

> Going forward no improvements or alterations are allowed to the property whatsoever.

Landlord K.D. testified that on June 16, 2020 she attended at the subject rental property and noticed that the tenant dug a large hole at the property approximately three feet wide and five to six feet long, without her or landlord D.D.'s permission. Landlord K.D.

also noticed that the tenant stored several unlicensed vehicles on the subject rental property.

Landlord K.D. testified that on June 17, 2020 she e-mailed the tenant, at the email address regularly used by the tenant to communicate with the landlord, two caution letters. The first caution letter regards the tenant's unauthorized changes to the land. and the second caution letter regards the unlicensed vehicles stored on the property.

Landlord K.D. testified that the primary form of communication between the parties was text message. Landlord K.D. testified that she texted the tenant on June 17, 2020 to inform him that she e-mailed him the caution letters.

Landlord K.D. entered into evidence the caution notices and the June 17, 2020 e-mail serving them on the tenant. Landlord K.D. also entered into evidence the tenant's responding email dated June 20, 2020.

The first caution notice states:

- the hole dug by the tenant is a problem;
- the hole dug by the tenant is a breach of a material term of the tenancy agreement;
- the hole must be back filled, and all construction material removed by June 22, 2020; and
- if the problem is not fixed by June 22, 2020, the landlords will end the tenancy.

The second caution notice states:

- the storage of unlicensed vehicles is a problem;
- the storage of unlicensed vehicles is a breach of a material term of the tenancy agreement;
- the problem must be fixed by June 19, 2020;
- if the problem is not fixed by June 19, 2020, the landlords will end the tenancy.

Landlord K.D. testified that when she attended at the subject rental property on June 22, 2020, the tenant had not removed the unlicensed vehicles and had not back filled the hole. Landlord K.D. testified that that not only had the tenant not back filled the hole, but he filled it with rocks and dug a second hole.

Landlord K.D. testified that a further five caution notices were served on the tenant for a variety of other issues.

Analysis

Based on the undisputed testimony of landlord K.D., I find that the tenant was deemed served with the One Month Notice on June 28, 2020, three days after its posting, in accordance with sections 88 and 90 of the *Act.*

Section 55 of the *Act* states that 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.

Since I have dismissed the tenant's application and have found that the One Month Notice meets the form and content requirements of section 52 of the *Act*, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act.*

Furthermore, section 47(1)(h) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Policy Guideline #8 states in part:

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
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> • that there is a problem;
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> • that they believe the problem is a breach of a material term of the tenancy agreement;
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> • that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
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> • that if the problem is not fixed by the deadline, the party will end the tenancy.
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> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof.

The March 30, 2020 Director's Order states:

> Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act and sections 64(2)(b) and (c) of the Manufactured Home Park Tenancy Act, I order that, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended:
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> • a document of the type described in section 88 or 89 of the Residential Tenancy Act or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:
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> • the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;
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> • the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or
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> • the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

The above order was rescinded as of June 23, 2020. I find that the tenant was served with the first and second caution notices in accordance with the March 30, 2020 director's order because the email used was routinely used to discuss tenancy matters and because the tenant responded to the email on June 20, 2020. I find that the tenant was deemed served with the caution notices on June 20, 2020.

Based on landlord K.D.'s undisputed testimony I find that the tenant altered the land of the subject rental property by digging holes in the land, contrary to section 1 of the tenancy agreement addendum. I find that this is a breach of a material term. I find that the tenant failed to remedy the breach by June 22, 2020 and in fact, continued to breach a material term of the tenancy agreement. I find that June 22, 2020 was a reasonable period for the tenant to back fill the original hole. I find that the contents of the second caution letter meet the requirement set out in Residential Tenancy Policy Guideline #8. Based on the above and pursuant to sections 47(1)(h) and 55 of the *Act*, I find that the landlords are entitled to a Two-Day Order of Possession.

As I have determined that the landlords are entitled to an Two-Day Order of possession based on section 55 of the *Act* and the first caution notice pursuant to section 47(1)(h) of the *Act*, I decline to consider if the landlords are entitled to an Order of Possession for any other reason.

Conclusion

The tenant's application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenant**. Should the tenant 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: August 10, 2020

Residential Tenancy Branch