Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

The tenants filed an Application for Dispute Resolution (the "Application") on August 4, 2020 seeking an order to cancel the One Month Notice to End Tenancy (the "One Month Notice") for cause. Additionally, they applied for an order that the landlord comply with the tenancy agreement, the *Residential Tenancy Act*, or the Regulations, and reimbursement of the Application filing fee. The hearing was held pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on September 11, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

One of the tenants and the landlord attended the hearing, and each party was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution, hand-delivered by the tenants. This included the evidence prepared in advance by the tenants.

Preliminary Issues

The tenant in attendance stated that they did not receive prepared documentary evidence from the landlord in advance of the hearing. They were not in their home township for the hearing, and they stated they were out-of-town away from the rental unit for days prior to the hearing on September 11, 2020. However, the other tenant remained at the unit and did receive a prepared binder of evidence placed in front of the door of the rental unit.

I find this service of the landlord's evidence is adequate with respect to the manner in which it was passed on; however, the timing is questionable. The Rules of Procedure governing the hearing process provide as follows:

3.15 Respondent's evidence provided in single package

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing . . . the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

With this rule in place, I find the landlord delivered their prepared evidence past the timeline set in the rules. Both parties confirmed the landlord provided the evidence binder on September 7, 2020, only five days in advance of the hearing on September 11, 2020.

I allowed the landlord to refer to materials in the binder throughout their oral testimony. That provided a means of context for their narrative in this hearing; however, I do not refer to the landlord's documentary evidence to verify details. I also do not rely on their documentary evidence in reaching conclusions and making findings of fact in this decision. In sum, I am not considering the documentary evidence of the landlord in this hearing. Their oral testimony – complete with the chance to fully respond to points raised by the tenant throughout – stands complete on its own and I afford it full consideration.

The tenants applied for an Order that states the landlord must comply with the *Act*, the regulations or the tenancy agreement. The issue here is that of the landlord "dropping things on the floor and stomping on the floor" in their unit above that of the tenants. Additionally, the tenants require notice when the landlord wishes to enter the unit, and to give notice if shutting off water to unit.

At the outset, I advised both parties of the immediate issue concerning the One Month Notice. By Rule 6.2, I do not consider these issues regarding landlord's compliance – they are unrelated to the tenants' Application to cancel the One Month Notice.

Issue(s) to be Decided

Are the tenants entitled to an order that the landlord cancel the One Month Notice?

If unsuccessful in this Application, are the landlord entitled to an Order of Possession of the rental unit?

Are the tenants entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord and tenant both confirmed details of the tenancy agreement, a copy of which was provided by the tenants. The tenancy started on May 1, 2019, to end on a fixed-term end date of October 31, 2019. The monthly rent was $1,200.00 payable on the first of each month. On May 1, the tenants paid a security deposit of $600.00 and a pet damage deposit of $200.00.

The tenants provided a copy of the One-Month Notice issued July 27, 2020. The tenant confirmed this was hand-delivered on July 27, 2020, one copy for each tenant. The effective date for the tenant to move out was August 31, 2020. The tenant stated it was 2 pages of a 3-page document.

The landlord stated it was a 3-page document, served by a process server on each tenant on July 27, 2020. On page 3 of the document, the landlord provided details:

- “multiple erratic outbursts” –
- on July 22, 2020 the tenant sprayed the landlord in the face with a hose and used “foul language”;
- messages from the tenant to the landlord resulted in reporting to the RCMP;
- the tenant “has interrupted the employees of the landlord’s. . .business that is located on the property.”

In the hearing the landlord described the background and events in question that led them to issue the One Month Notice. Details include:

- two incidents resulted in the landlord calling the police – a January 2020 incident left the landlord “not comfortable going back in”;
- the landlord has video of the tenant stated they used the hose to “antagonize” the landlord;
- the tenant inappropriately disclosed personal details of the landlord’s lifestyle to others;

- the other tenant who was not present at the hearing did not engage in such behaviour;
- they have records of many text messages concerning issues within the rental unit area, particularly on pet waste.

The tenant in the hearing described their evidence and provided their testimony on why they feel the One Month Notice is not valid. This includes a background to water being shut off in the unit unannounced, water issues not properly attended to, and a sprinkler system causing issues with their car interior. The tenant in their written account states that "[they] should have reached out to the landlord . . . sooner instead of becoming heated when [their] concerns were not addressed." The landlord is "embellishing" their account of spray with the hose. The tenant also stated they are looking for another place to live, in recognition of ongoing communication difficulties and tension.

The landlord and tenant disagreed in the hearing about the amount of assistance that the landlord provided to the tenant in helping them to find another suitable place to live. The landlord provided that they forwarded information to the tenant and that they "found a place"; however, the tenant stated this was not affordable.

Analysis

The *Act* section 47(2) contains the following provisions:

> (2) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> (d) the tenant . . . has
>
> i. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> ii. seriously jeopardized the health or safety or lawful right of another occupant or the landlord,
>
> . . .

Section 47(4) of the *Act* states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the One-Month Notice was issued pursuant to section 47 and I accept the landlord's evidence that they served this document to the tenants on July 27, 2020.

The *Act* section 52 provides:

In order to be effective, a notice to end a tenancy 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). . . state the grounds for ending the tenancy,
. . .and
(e)when given by a landlord, be in the approved form.

I find the One Month Notice bears sufficient detail as to comply with the requirements of section 52 regarding form and content. The pertinent details of the end-of-tenancy date and the date of issue are provided. Moreover, the details of the cause are provided on page 3 and the tenant did not object to receiving page 3 of the document. As such, I find the tenant was aware of the reasons for the landlord issuing the One Month Notice on July 27, 2020. The tenant was afforded full opportunity to apply for a cancellation of the One Month Notice, and fully answered to the details of the cause provided on page 3. I find this shows the landlord provided sufficient form and content in the document itself.

When a landlord issues a One-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

The landlord provided details of the cause on page 3. I find these details link to the categories described in section 47(d) of the *Act*. I find the landlord's evidence shows sufficient cause for the landlord to issue the One-Month Notice.

The reasons for my finding are as follows:

- on communication:
  - the tenant is in the main responsible for the high frequency of messages, and admitted this during the hearing;
  - the landlord described the tone and content of messaging in the hearing – this includes "foul language" and disrespect – I find this is in line with the two incidents listed on the One Month Notice and described in the hearing;
  - the landlord's evidence is credible on these issues to the extent that "it has gone too far now" leaving one of them "not comfortable";

  - text messages are not a viable means of communicating clearly – this has self-perpetuated to the extent where two incidents occurred because of the text messaging background.

- on two incidents:
  - the landlord's evidence is credible on the police attending to answer a call on disturbance – the tenant bears responsibility for outbursts that led to this;
  - the tenant acknowledged there were two incidents, when "each time there was an escalation" – they would "100% do it differently";
  - the evidence presented by the landlord is sound and credible in showing the degree and severity of the tenant's actions;
  - one of the tenant's actions was in response to sprinklers set by the landlord spraying their car – I find the tenant's action in response to that mere inconvenience is quite severe;
  - the landlord is credible on the tenant disclosing to another that this was meant to "antagonize" the landlord – I find this verifies the evidence that the spray was in the landlord's face;
  - the severe reaction involving the sprinklers lends credence to the landlord's account of the earlier January incident where the tenant yelled and swore at the landlord over something similarly commonplace in nature.

In sum, the landlord's account is credible on the tenant's actions and behaviour in two incidents. The actions undertaken by the tenant at these times is more severe than warranted in the circumstances. The tenant acknowledged this; however, I find a possible background of communication via text messages does not excuse the severe actions. Moreover, I find it more likely than not that poor communication will continue to exacerbate the present tension.

In line with section 47 criteria, I find the tenant's actions were those which "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property." In particular, the one action was egregious in nature, in response to something inconvenient.

In summary, I find the pattern of communication in this matter was self-perpetuating and increasing in its harshness. Both the landlord and tenant gave evidence that attests to this in the hearing. I find the tenant's actions qualify as significant interference or

unreasonable disturbance. The landlord has provided substantial evidence of the tenant's conduct and messaging that causes concern.

I find the One-Month Notice issued by the landlord on July 27, 2020 complies with the requirements for form and content set out in section 52 of the *Act*.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*.

By this provision, I find the landlord are entitled to an Order of Possession.

As the tenants were unsuccessful in this application, I dismiss their request for recovery of the hearing filing fee.

Conclusion

Under section 55(1) and 55(3) of the *Act*, I grant an Order of Possession effective **September 30, 2020.** 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 *Act*.

Dated: September 14, 2020

Residential Tenancy Branch