Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNC

Introduction

In this dispute, the tenants seek an order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47 of the *Residential Tenancy Act* (the "Act").

The tenants filed an application for dispute resolution on August 7, 2020 and a dispute resolution hearing was held on September 18, 2020. The landlord and the tenant (G.C.) attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

It should be noted that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

By way of background, the tenancy in this dispute began on September 1, 2012. Monthly rent is $725.00; there is a security deposit of $325.00 and a pet damage deposit of $100.00. Submitted into evidence is a copy of a written tenancy agreement (the "Agreement"). The Agreement includes the following clause (emphasis in original):

> [tenant's name redacted] is responsible for:
> *garbage removal
> * yard maintenance – tidy, free from garbage, grass mowed and raked
> (you will need a lawnmower, rake and wheelbarrow)
> [. . .]
> **Unkept or damaged yard or trailer and/or breach of lease agreement are cause for eviction!**

The landlord testified that he served the Notice on the tenant, in-person, on August 1, 2020. A copy of the Notice was submitted into evidence and on which page two there were three grounds indicated as the reasons for the Notice. One ground was for repeatedly late rent, which will not be addressed in this dispute. The second ground was related to the tenant putting the landlord's property at significant risk; the landlord did not make any submissions regarding this ground.

A third ground indicated on the Notice was that there occurred a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." On this point, the landlord testified that this was the "main issue." In short, the landlord stated that, contrary to the Agreement, the tenant has not undertaken the required yard maintenance. He gave the tenant a verbal warning on June 1, 2020, and then a written warning on July 9, 2020. The tenant did not clean up the property, which required and requires mowing and weed whacking. "Still no yard work was done," after the warnings were given, explained the landlord.

The rental unit is a trailer that sits on a large piece of land. About ¾ acres of the land are the tenant's responsibility in terms of yard maintenance. After the tenant failed to do the required yard maintenance (as a result of a hip injury), the landlord provided a phone number of someone who could take care of the yard. However, the landlord said that the tenant never really took care of the issue even after receiving the number.

In his testimony, the tenant said, "I pretty much agree with everything that he said." He explained that he hurt his hip about four years ago, and in the past year or so has found it extremely difficult to take care of the yard like he used to. He did get someone to take care of some of the yard, but they were only able to do about half of it before he received the Notice. The tenant submitted a photograph of part of the property which he said "looks pretty good."

That said, the tenant testified that the yard has become totally overgrown, even though he has kept it up and looking good for the first seven years of the tenancy. The

relationship has been amicable and he “didn’t expect” the landlord to give him a Notice. He argued that “I don’t think I should be evicted because the yard’s gone to the wayside.” Finally, he explained that he has otherwise been a good tenant, notwithstanding that “yes, [the yard] looks horrible now.” But, he should not be evicted because of “one slip-up.”

In his final submission, the landlord said that he agreed with the tenant’s comments about him being a good tenant, but that the yard has been in a poor state for an entire year, and that “one year is plenty long to get the lawn cut.” In some places the grass is three feet high, he added. In summary, the landlord submitted that “I just feel that there’s more than enough cause” to end the tenancy.

In the tenant’s and landlord’s final submissions, they provided (if the landlord was successful in upholding the Notice and obtaining an order of possession) their desired or acceptable effective dates for an order of possession. The tenant asked for, and the landlord was “OK with” a vacate date of the end of October 2020. There were some other unrelated issues concerning the hydro and rent payments, but as these are not pertinent to the issues of this dispute I will not reproduce that evidence further.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. The Notice in this dispute was issued on three grounds, only one of which was dealt with, namely, a breach of a material term of the Agreement.

Section 47(1)(h) of the Act states that a landlord may end a tenancy by giving notice when

> (h) the tenant
>
> (i) has failed to comply with a material term, and
> (ii) (has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The relevant material term in this tenancy is that the tenant is responsible for yard maintenance. The landlord testified that the tenant has not fulfilled that obligation and the tenant did not dispute that the yard “look horrible.” Certainly, while some efforts were made by the tenant to do some of the maintenance, it appears that he let it slip by the wayside. Which, I must admit, is rather more unfortunate given that the tenant owned and operated his own yard maintenance business. Even with a hip injury (which is one of the more painful of injuries, and one that persists for many years), however, I find that the tenant did not make reasonable efforts at meeting the Agreement’s material term in respect of yard maintenance.

The landlord provided a verbal warning (which is actually irrelevant insofar as the Act is concerned). However, the landlord provided a written warning about the lawn maintenance on July 9, 2020, and the tenant had over three weeks to do something about the lawn. Regrettably, he did not, and the landlord issued the Notice.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued. For these reasons, I must dismiss the tenant’s application for an order to cancel the Notice. The landlord’s Notice is therefore upheld.

Section 55(1) 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
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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
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

> 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) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
(e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the Notice and find that it complies with section 52 of the Act. Further, having dismissed the tenants' application, I thus grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision. Finally, I have taken into consideration the parties' positions regarding the effective date of the order of possession, reflected below.

Conclusion

The tenants' application is hereby dismissed, without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants within two (2) days of the landlord receiving this Decision and in no case later than September 30, 2020.

The order of possession will go into effect at 11:59 PM on October 31, 2020, on which date and time the tenancy shall end.

In the unlikely event that the tenants do not comply with the order of possession, the landlord may file, and enforce, the order in the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 18, 2020

Residential Tenancy Branch