Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OLC, RP, LRE, LAT, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 10 Day Notice and the 1 Month Notice on August 25, 2020, I find that the tenant was duly served with these Notices in accordance with section 88 of the *Act*. As the landlord's agent (the agent) confirmed that by early September 2020, they had received a copy of the tenant's dispute resolution hearing package, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.*

Since the tenant confirmed that they had received copies of the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

At the hearing, the agent testified that they had received copies of the tenant's written evidence, but had not received a USB that the tenant's witness, the tenant's son, said that they had included in the written evidence provided to the agent As it was unclear which documents and evidence had been received by the agent and very little of this material had any bearing on the two Notices to End Tenancy, I accept that the tenant's evidence to has been served to the landlord/agent in accordance with section 88 of the *Act.*

Preliminary Matters

I noted at the outset of this hearing that Residential Tenancy Branch (RTB) Rule of Procedure 2.3 establishes that issues identified in an application for dispute resolution must be related to each other. In accordance with this Rule, I find that the primary issues in dispute of most importance are whether this tenancy is to continue, and have thus severed those issues identified in the tenant's application that extend beyond the tenant's application to cancel the two Notices to End Tenancy issued by the landlord on August 25, 2020. I advised the parties that the remainder of the tenant's concerns would be dismissed with leave to reapply in the event that this tenancy were to continue. I noted that in the event that the tenancy ended on the basis of either of the two Notices to End Tenancy, the tenant's other concerns would become moot and the remainder of the tenant's application would be dismissed.

At the beginning of the hearing, the agent confirmed that they had not provided a copy of the 10 Day Notice, and were no longer seeking an end to this tenancy on the basis of that Notice. They explained that at the time they issued the 10 Day Notice, they were unaware that they could not obtain an end to this tenancy on the basis of the non-payment of rent during the State of Emergency caused by the global coronavirus pandemic between March 17, 2020 and late August 2020. As the agent is no longer seeking an end to this tenancy on the basis of the 10 Day Notice by September 3, 2020, I allow the tenant's application to cancel the 10 Day Notice. That Notice is set aside and is of no continuing force or effect.

The parties also reported that the agent has initiated an application for dispute resolution with respect to an ongoing dispute with respect to the agent's attempts to show the rental unit to prospective tenants. The parties confirmed that the landlord's

application is scheduled to be heard on December 15, 2020 (see above file reference). Since this is a fixed term tenancy, not scheduled to end until February 28, 2021, the landlord is apparently attempting to mitigate the tenants' exposure to the landlord's loss of rent for the month after the 1 Month Notice is to take effect. I noted that I could not address the landlord's application, which will be heard on December 15, 2020.

I also noted that some of the issues identified in the tenant's application involve an assault that the agent's spouse, another of the landlord's agents in this tenancy, allegedly directed at the tenant's son, their translator and witness at this hearing. I advised that alleged assaults extend far beyond the jurisdiction of the *Act* and that I could not conduct a hearing of such an issue. I observed that allegations of this type should be directed to the police. The agent said that the police have already been contacted with respect to that incident.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On February 14, 2020, the tenant, another tenant identified as YVG and the landlord's representatives signed a one-year fixed term tenancy that was to cover the period from March 1, 2020 until February 28, 2021. According to the terms of the Residential Tenancy Agreement (the Agreement), a copy of which was entered into written evidence for this hearing, monthly rent is set at $1,650.00, payable in advance on the first of each month. Although the tenant paid an $825.00 security deposit on February 18, 2020, the parties agreed that there has been no payment of the $825.00 pet damage deposit identified as required in the Agreement.

The tenant entered into written evidence a copy of the 1 Month Notice, requiring the tenants to end this tenancy by September 30, 2020 for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

Residential Tenancy Act only; security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

In the Details of the Causes section of the 1 Month Notice, the landlord's agent stated the following:

Tenants have too many vehicles and an RV on the property and have not removed them after being told to do so many times. Tenants have not paid their pet deposit that was due in March 2020.

The tenant maintained that they informed the landlord's agent when they signed the Agreement that they would not be able to pay the pet damage deposit immediately, but would pay this when they had the funds to do so. As outlined in their written evidence set out below, the tenant alleged that the landlord agreed to these oral terms allowing the tenant to pay the pet damage deposit at some unspecified time in the future.

... We told K we only had the money for the first month of rent for the month of March and for the security deposit. K was angry because of the misunderstanding and told us that we should have told him earlier. K then agreed to allow us to live in the property for the 15 days left of February without paying until our contract began on March 1 and to pay him the pet deposit when we had it. K's wife told us we could even have up to 3 months to pay the pet damage deposit but we agreed to pay as soon as possible...

(as in original but for anonymization of names)

At the hearing, the agent confirmed that there was nothing in the Agreement stipulating how many parking spaces the tenants were entitled to use. They gave undisputed sworn testimony that this rental unit is part of two four-plexes. They said that each tenant has two parking spaces. The agent said that the tenant has five vehicles plus an RV that they park in the back of this building and use for storage. The agent said that other tenants cannot use parking spaces that should be available to them because the tenants refuse to limit themselves to two parking spaces. The agent said that they and the other agent have spoken to the tenant about this on many occasions and have sent them text messages requiring them to reduce the number of parking spaces they use for their vehicles. The agent said that they have not sent the tenants anything in writing about this matter.

The agent confirmed that they and the other agent realized that the tenants were in financial distress and could not afford to pay for the last two weeks of February 2020

when they took occupancy of the rental unit early and could only pay their security deposit and first month's rent. The agent confirmed the tenant's assertion that they gave the tenants permission to delay paying their pet damage deposit for a little while, but expected this deposit to be paid within the first couple of months of their tenancy. The agent said that the tenants have not paid their pet damage deposit, even after they issued their 1 Month Notice to them on August 25, 2020.

The tenant confirmed that even now they have still not paid the pet damage deposit for this tenancy.

The tenant's son testified that when the other agent in this matter, Agent KC, attended the property for a condition inspection, they asked the agent how much was owing for this tenancy, including the pet damage deposit. The tenant's son said that Agent KC became agitated and refused to provide a figure as to what was owing. The tenant's son said that this happened on July 24, 2020.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, as occurred in this case, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Section 47(1) of the *Act* reads in part as follows:

> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> *(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;...*
>
> *(d) the tenant or a person permitted on the residential property by the tenant has*
>
> *(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

As I noted at the hearing, I am not satisfied that the landlords or their agents have demonstrated to the extent required that they have provided the tenants with a warning

letter that their tenancy could end for cause on the basis of their continuing to keep an unreasonable number of vehicles parked on this rental property. In this regard, I also find that the agent has not demonstrated that the vehicles kept on the rental property significantly interfere with or unreasonable disturb another occupant or the landlord.

Turning to the second of the reasons cited in the 1 Month Notice, the Agreement clearly states that a pet damage deposit of $825.00 is required for this tenancy. There is undisputed evidence and testimony that the landlord's agents did demonstrate some leniency in agreeing to delay enforcing the requirement that the pet damage deposit be paid within the first 30 days of this fixed term tenancy. While the terms of the extension of time to pay the pet damage deposit are unclear, the agent gave undisputed sworn testimony that they were expecting that the extension of time they were providing would not extend more than a couple of months. Both parties agree that even after this tenancy has been in place for almost seven months, the tenants have yet to make any payment towards this required pet damage deposit.

In considering this matter, I give little weight to the testimony given by the tenant's witness in claiming that their attempt to find out the combined amount owing for the pet damage deposit and unpaid rent from early in the pandemic constituted a genuine attempt to pay the pet damage deposit. While the amount of unpaid rent may have been unclear, the tenants certainly knew the amount of the pet damage deposit, one-half of the monthly rent, as was set out in the Agreement they signed when this tenancy began.

Although special provisions are in place with respect to the non-payment of rent that became owing during the time of the State of Emergency caused by the global pandemic, this does not apply to a pet damage deposit. In addition, I note that the pet damage was due on March 1, 2020, before the State of Emergency began.

I acknowledge that the terms of the oral agreement that both agents for the landlord made to allow the tenants to delay paying their pet damage deposit are unclear. However, the agent's claim that they were only planning to grant an extension of "a couple of months" does not vary significantly from the tenant's own written evidence that the agent agreed to let them pay the pet damage deposit up to three months after it was due. By the time the 1 Month Notice was issued, almost six months had passed, with no payment of the pet damage deposit having been offered by the tenants.

Under these circumstances, I find that the landlords were within their legal rights to seek an end to this tenancy pursuant to paragraph 47(1)(a) of the *Act*, when they had not

received payment for the pet damage deposit by August 25, 2020, almost six months after this tenancy started. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice.

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

> *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*
>
> > *(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 47(3) of the *Act* requires that "a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*. I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on September 30, 2020, the effective date of the 1 Month Notice. 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 the time required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since the tenant was successful in obtaining the cancellation of the 10 Day Notice, the agents issued this Notice in error, and the effective date on that Notice would have been much earlier than the effective date of the 1 Month Notice, I find that the tenant is entitled to recover one-half of their filing fee from the landlord. I issue a monetary Order in the tenant's favour in the amount of $50.00.

Conclusion

The tenant's application to cancel the 10 Day Notice is allowed. The 10 Day Notice is set aside and is of no continuing force or effect.

The tenant's application to cancel the 1 Month Notice is dismissed. The landlord is provided with a formal copy of an Order of Possession effective on September 30,

2020. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the tenant's favour in the amount of $50.00, an amount that enables them to recover one-half of their filing fee from the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The remainder of the tenant's application is dismissed as this tenancy is ending within the next week.

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: September 24, 2020

Residential Tenancy Branch