Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, LAT, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice);
- An order for the Landlord to comply with the Act, regulations or tenancy agreement;
- Authorization to change the locks;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application 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 section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, the Landlord's Legal Counsel (Counsel), and two witnesses for the Landlord (A.K. and E.H.), all of whom provided affirmed testimony. Counsel acknowledged receipt of the Application and Notice of Hearing from the Tenant, and raised no concerns regarding service of these documents. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary matters

Preliminary Matter #1

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end and that the other claims by the Tenant are not sufficiently related to the One Month Notice or continuation of the tenancy and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to comply with the Act, regulation or tenancy agreement;
- Authorization to change the locks; and
- An order restricting or setting conditions on the Landlord's right to enter the rental unit.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a One Month Notice and recovery of the filing fee.

Preliminary Matter #2

During the hearing Counsel argued that the Tenant's evidence, which was served in two separate packages of 20+ pages each, had been received late. Counsel stated that the first package had been personally served on October 2, 2020, only three days before the hearing, and that the second package had been sent by email only one day before the hearing. The Tenant confirmed that their evidence was served as set out above.

The Landlord and Counsel therefore argued that this evidence should be excluded from consideration as there was insufficient time for them to review it prior to the hearing.

The Tenant's Application seeking cancellation of the One Month Notice was filed on August 18, 2020, and rule 2.5 of the Rules of Procedure states that to the extent possible, copies of all documentary and digital evidence to be relied on in the proceeding should be submitted to the Residential Tenancy Branch (the Branch) when the Application is filed. Further to this, rule 3.15 of the Rules of Procedure states that all evidence intended to be relied on by the applicant at the hearing must be received by the respondent not less than 14 days before the hearing.

Given that the Tenant filed their Application on August 18, 2020, and the hearing was set for 9:30 AM on October 5, 2020, I find that the Tenant had more than enough time to serve any evidence they wished to be considered at the hearing on the Landlord in compliance with the timelines set out in the Rules of Procedure. Although rule 3.17 of the Rules of Procedure allows for the service and acceptance of late evidence, it requires that this evidence be new and relevant. As all of this documentary evidence either existed or could reasonably have been obtained by the Tenant well in advance of the hearing, I do not find it reasonable to admit the late evidence for consideration pursuant to rule 3.17. Additionally, I find that granting an adjournment in order to allow the Landlord and their Counsel an opportunity to review the late documentary evidence would be significantly prejudicial to the Landlord, as the Tenant's Application relates to cancellation of a One Month Notice for which the effective date has passed.

As a result of the above, I therefore excluded the Tenant's documentary evidence from consideration in this matter.

The Landlord stated that their documentary evidence in support of the One Month Notice was personally served on the Tenant on August 17, 2020, in the presence of a witness, and the Tenant acknowledged receipt. As the Tenant raised no concerns regarding service of this evidence on them, I therefore accepted the Landlord's documentary evidence for consideration in this matter.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the One Month Notice is upheld or the Tenant's Application seeking its cancellation is dismissed, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on May 1, 2019, and became month to month at the end of the fixed term on April 30, 2020. The tenancy agreement states that rent in the amount of $3,000.00 is due on the fifth day of each month and that a $1,500.00 security deposit was paid. During the hearing the parties confirmed that these are the correct terms of the tenancy agreement.

The parties agreed that their relationship had become acrimonious and as a result, the Landlord stated that they no longer wished to be a landlord. The Landlord stated that they began active attempts to sell the property, including engaging a real estate agent, listing the property for sale, and scheduling showings, but the Tenant has been intentionally sabotaging their attempts to sell the property by refusing and/or delaying entry to the rental unit for photography and showings, despite being served with proper notice of entry under the Act.

The Landlord and their Counsel stated that on July 24, 2020, they emailed the Tenant a 24 hour notice of entry for the purpose of having photographs taken for the sale listing. The Landlord and their Counsel stated that the Tenant refused to accept the 24 hour notice and instead demanded that the entry take place on Sunday July 26, 2020. Although the Landlord stated that they had no legal obligation to move the date of the entry, they complied in order to make it easier for the Tenant. The Landlord stated that the Tenant had also confirmed the date and the time of the appointment on Saturday July 25, 2020, when the Landlord and their sons were on the property completing routine maintenance and lawn care. However, the Witness A.K, who is the real estate agent, stated that when they and the photographer arrived at the rental unit at the scheduled time on July 26, 2020, they were initially refused entry by the Tenant.

The Landlord and the Witness stated that the photographer and real estate agent were only granted entry by the Tenant approximately one hour later, after the Tenant had rushed around cleaning the rental unit and the Landlord had arrived.

Although the Tenant disagreed with the characterization of their actions as a denial of entry, they agreed that the photographer and real estate agent were not permitted entry to the rental unit when they arrived. Instead the Tenant stated that they waited

approximately 30 minutes for the Landlord to arrive before granting them entry as they were not familiar with the real estate agent or the photographer. The Tenant also denied that the rental unit was not clean and ready to be photographed at the scheduled time.

The Landlord and their legal counsel stated that despite having served at least five (5) subsequent notices of entry on the Tenant as required by the Act for the purpose of showing the rental unit to prospective buyers, and scheduling these entries on Sundays whenever possible as requested by the Tenant, no showings have taken place as the Tenant always cancels them or refuses entry. Although the Landlord and their Counsel stated that the Tenant has given various excuses for why the showings cannot proceed, such as family illness, these excuses are baseless and simply an effort to sabotage the Landlord's efforts to sell the property.

Based on the above, the Landlord stated that the One Month Notice was personally served on the Tenant, in the presence of the Witness E.H., on August 17, 2020. During the hearing, the Tenant confirmed receipt on this date.

The One Month Notice in the documentary evidence before me, signed and dated August 16, 2020, has an effective date of September 20, 2020, and lists the following grounds for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and
- 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

Under details of cause in the One Month Notice it states the following:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

The landlord is attempting to sell the residential home. However the tenant has repeatedly sabotaged the process on multiple occasions.

Despite being given valid 24 hour notices, the tenant has refused/prevented the landlord and his realtor to access the rental unit on multiple occasions. On Aug 7th, 2020. On Aug 13th, 2020. A warning letter was issued and the tenant still refused to comply for he purposely did not reply to our attempts of communication for entry on Aug 16th, 2020.

The tenant also is very hostile when the landlord steps foot onto the property. Whether it be when the lawns are being maintained, or coming to see the basement tenants. The main suite tenant wrongfully expects 24 hour notices from the landlord if the landlord wants to step onto to the property itself, let alone inside the tenants rental unit.

Served with this notice will be an extensively detailed document which fully outlines Mr. Gondal's wrongful refusal of entry.

The Landlord and their Counsel argued that the Landlord has a right under section 29 of the Act to enter the rental unit after having provided proper notice to do so, and that the Tenant's continual refusal to allow the Landlord, the real estate agent, and prospective purchasers entry to the rental unit constitutes grounds to end the tenancy pursuant to section 47 of the Act. In support of their testimony and position, the Landlord submitted a copy of the tenancy agreement, a copy of the One Month Notice, a Proof of Service document for service of the One Month Notice, and a 29 page written submission which includes, among other things, copies and reproductions of email communications between the parties in relation to notices of entry from the Landlord and refusal of entry and or the cancellation of showings by the Tenant.

The Tenant denied that they are attempting to sabotage the Landlord's efforts to sell the property and stated that they have made the property available for viewings on Sundays between 1-3 P.M. The Tenant argued that it is the Landlord and not them, who is responsible for the failed viewings as the Landlord has intentionally scheduling viewings outside of their available two hour window on Sundays. The Tenant also stated that they simply want the Landlord, the real estate agent, and all persons permitted entry to the rental unit for viewings to follow CDC guidelines.

The Landlord and their Counsel stated that despite initially agreeing to be cooperative with regards to showing the property, the Tenant will only agree to showings for a few hours on Sundays, and while they have made every attempt to abide by the Tenants wishes, this limited time slot does not work for all prospective buyers. Further to this, the Landlord stated that the Tenant has cancelled all viewings, including ones scheduled on Sundays between 1-3 P.M. and as a result, not a single showing has taken place. Finally, the Landlord stated that they and the real estate agent have been clear that they are willing to abide by reasonable safety precautions, such as gloves, masks, and shoe coverings for all personas permitted entry to the property, the signing of health waivers, the provision of hand sanitizer, and contactless viewings where prospective purchasers are not permitted to touch anything in the renal unit, including doors, however, the Tenant's requests for professional sanitization of the entire rental unit after each showing has no legal basis and is completely unreasonable.

Analysis

Based on the documentary evidence before me and the affirmed testimony of the parties in the hearing, I am satisfied that the Tenant was personally served with the One Month Notice on August 17, 2020.

Section 29(2) of the Act permits landlords and their agents the right to enter the rental unit for reasonable purposes, provided they give written notice for the entry at least 24 hours and not more than 30 days before the entry, that includes information regarding the purpose for entering, which must be reasonable, and the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees. Section 29 of the Act also permits landlords and their agents to enter the rental unit without 24 hours written notice, provided the tenant has agreed to this entry either at the time of the entry, or not more than 30 days prior to it.

Based on the documentary evidence before me from the Landlord and the testimony of the parties in the hearing, I am satisfied that the Landlord and/or their agents provided the Tenant with proper written notice for entry in compliance with section 29(2) of the Act when they emailed them, the Tenant's preferred method of contact, on numerous occasions regarding entry to the rental unit for the purpose of having it listed for sale and conducting showings. Although the Tenant indicated in the hearing and some of the email communications before me for review, that the Landlord and/or their agents were permitted entry to the rental unit for these purposes without the need for written notice, provided the entries were on Sundays between 1:00 – 3:00 P.M., I am satisfied by the emails submitted by the Landlord and their Counsel that the Tenant none the less cancelled all viewings scheduled during this time period. I also find that the Tenant has no lawful right under the Act to dictate when entry by the Landlord will occur, provided the Landlord gives proper notice for the entry in accordance with section 29(2) of the Act.

Further to this, I am satisfied by the documentary evidence and testimony before me that the Tenant is intentionally preventing access to the rental unit, without a lawful right to do so under the Act, likely as a result of the acrimonious relationship between themselves and the Landlord. In coming to this conclusion I found several emails authored by the Tenant of particular interest wherein the Tenant dictated, without any lawful right under the Act to do so, that entry would only be permitted on Sunday's between 1:00 – 3:00 P.M. as that was most convenient for them, that entry would be denied if it was scheduled outside of this time period, and that entry would be denied if the Landlord and their agents did not have the rental unit fully and professionally sanitized after every entry. It is also clear to me from the emails authored by the Tenant that they incorrectly believe that as the sale of the property benefits the Landlord, and not them, that they bear no responsibility in facilitating or permitting entry to the property within reasonable limits, even when provided proper written notice of entry by the Landlord, and that it is the Landlord's responsibility to comply with the Tenant's schedule and demands if they want entry to the rental unit.

While I appreciate the Tenant's health and safety concerns, I am satisfied that the Landlord and their agents were and continue to be willing to abide by reasonable health and safety recommendations, such as requiring all persons permitted entry to the rental unit to:

- sign a waiver certifying that they are healthy and have not recently travelled;
- sanitize their hands; and
- wear a mask, gloves, and shoe coverings.

I am also satisfied that the Landlord and their agents have made every attempt to provide viewings in a safe manner by stipulating that persons permitted entry to the rental unit will not be allowed to touch anything, including door handles, and requesting that the Tenant therefore leave things such as bedroom, bathroom, and closet doors open before viewings.

I find that not only has the Landlord repeatedly given proper written notice to enter the rental unit pursuant to section 29(2) of the Act, but that they have made every reasonable effort to accommodate the Tenant's preferred day of the week for showings, whenever possible, and are willing to take more than reasonable safety precautions. I find that the Tenant's insistence that viewings only be scheduled during a limited two hour time window on Sundays for their own convenience, their request for full professional sanitization of the rental unit after each entry, and their repeated cancellations of viewing, even those scheduled according to their own preferences, and statements that entry will be denied if their demands are not met with regards to scheduling and safety measures, regardless of whether or not proper notice of entry has been given, constitute both a significant interference to the Landlord and serious jeopardy to the Landlord's lawful right to enter the rental unit pursuant to section 29 of the Act. As a result, I find that the Landlord had cause to serve the One Month Notice and has cause to end the tenancy pursuant to section 47(d)(i) and 47(d)(ii) of the Act.

The One Month Notice in the documentary evidence before me is in writing on the approved form, is signed and dated by the Landlord, and contains the address for the rental unit as well as the grounds for ending the tenancy. Although the effective date of the One Month Notice, September 20, 2020, does not comply with the minimum service period requirements set out under section 47(2) of the Act, I find that this date is automatically corrected to the earliest date that does, September 30, 2020, pursuant to section 53(2) of the Act. As a result, I find that the One Month Notice therefore complies with section 52 of the Act and I dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply. As the Tenant was unsuccessful in their

Application, I also dismiss their claim for recovery of the filing fee without leave to reapply.

Pursuant to section 55(1) of the Act, I find that the Landlord is therefore entitled to an Order Possession for the rental unit. As the corrected effective date of the One Month Notice, September 30, 2020, has passed, I grant the Landlord an Order of Possession for October 31, 2020, at 1:00 P.M. and I order the Tenant to vacate the rental unit by that date.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **October 31, 2020, at 1:00 P.M.,** after service of this Order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court. The Tenant is cautioned that costs of such enforcement, such as bailiff fees, are recoverable from them by the Landlord.

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: October 21, 2020

Residential Tenancy Branch