Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNC, OLC, MNDCT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*.

The landlord BJ attended for both landlords ("the landlord"). The tenant attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained. The landlord called the witness RY who provided affirmed testimony.

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord. Section 55 states as follows:

> *55 (1) 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.*

Preliminary Issue – Dismissal of Unrelated Claims

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's Notice.

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing the Notice. I find that the additional claims are not related to whether the tenancy continues.

Therefore, all the tenant's claims except for her application to dispute the landlord's Notice are dismissed, and I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

> *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*
>
> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

The tenant appeared upset, belligerent and argumentative throughout the hearing. During the conference, the tenant interrupted, spoke at the same time, and argued with me, the landlord and the landlord's witness, accusing the landlord many times of "lying". The tenant raised issues irrelevant to the hearing. The tenant was warned several times to stop interrupting and to refer to only relevant matters.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Notice?

Background and Evidence

This hearing involved an application by a tenant to cancel the Notice.

The tenant and landlord estimated their written submissions consisted of 100 pages of evidence and 60 pages, respectively. The landlord submitted many witness statements. The hearing lasted 86 minutes and included considerable conflicting testimony. Not all the evidence is referred to in my Decision. I refer to only key, relevant, and admissible facts and findings.

The parties entered into a fixed term tenancy beginning September 3, 2019 and scheduled to end on June 1, 2020; the tenancy continued after that on a monthly basis. The unit is a condominium in a resort area. Rent is $950.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of $475.00 which the landlord holds. A copy of the tenancy agreement was submitted.

The tenancy relationship has been acrimonious. At a previous arbitration, the landlord's first Notice to End Tenancy for Cause ("the previous Notice") dated January 16, 2020 was dismissed by an Arbitrator's Decision dated March 20, 2020. The tenant's cross application for relief was also dismissed with leave to reapply. The file numbers appear on the first page.

The landlord issued a second Notice dated September 19, 2020 which is the subject of this hearing; the tenant acknowledged service effective September 22, 2020 and filed an application to dispute on September 21, 2020. The Notice had an effective date of October 30, 2020, corrected to October 31, 2020. The Notice stated as the reasons for issuance:

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

The landlord testified as to the circumstances which led to the issuance of the Notice. His testimony was confirmed by his written submissions and several witness statements. The landlord primarily relied upon the first ground that is, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenant's actions have resulted in several warnings from the strata for noise and nuisance, the tenant has obstructed a required fire inspection, and the tenant has behaved in a rude and abusive manner to other tenants in the building. Part of the landlord's evidence includes the following written submission:

> [The tenant] has created very uncomfortable living conditions for myself and others at the resort. … I am very upset by all the bylaw infractions she created in a 6-month period. […]
>
> I am very upset that [the tenant] would jeopardize the safety of my unit by not allowing a fire inspector into my unit. [The tenant] left a note on my unit door during that time of the scheduled fire inspection stating no entry to the suite.
>
> It is very clear that I want her out of my suite now. I want peace at the resort with my strata company, neighbours and staff not to be harassed anymore. [The tenant] has abused the strata bylaws, upset owners and guests that will testify on the impact she has caused them and myself. [….]
>
> Her actions have created a fear factor. She is capable of noncompliance & enjoys revenge tactics such as civil lawsuits against strata.

After the filing of the previous Notice, the landlord received a notice of bylaw infraction dated January 23, 2020 from the strata relating to the tenant's unleashed dog and garbage; the tenant acknowledged receipt of the by-law notice, a copy of which was submitted as evidence.

As well, the landlord testified that on January 14, 2020, the police were called to the unit and attended twice for a noise complaint from the security guard regarding the unit. The

tenant acknowledged the incident occurred, said that she “had too much to drink” and she was “yelling obscenities”.

The tenant denied that she let her dog be unleashed or failed to pick up feces. With respect to the January 14, 2020 noise complaint involving the police, the tenant maintained that this was a single, unrepeated event with which the landlord disagreed.

The landlord testified that on October 7, 2020, the tenant refused to let the landlord and a fire inspector into the unit after proper notice; as a result, the unit has not been certified as compliant with fire regulations. The landlord explained he attended at the unit at a scheduled time/date; the tenant and her dog were in the unit and she refused to answer the door. The landlord provided a letter of confirmation from the fire safety company confirming this version of events.

The tenant acknowledged that the incident occurred but testified she had informed the landlord by text that he could enter without her opening the door. The landlord denied this and stated he would not enter the unit without her granting entry because he was afraid of what she would do to him.

In response to one strata notice of complaint, the tenant responded in a letter of August 4, 2020, a copy of which was submitted as evidence, “I understand my guests we[re] out of line and it was my responsibility to babysit grown adults – lesson learned.”

The landlord called a witness RH who is an owner of the marina and entertainment facilities including a drinking establishment near the building in which the unit is located. RH testified that the tenant came to his facilities in the summer of 2020; she was occasionally “drunk and disorderly”, “getting in people’s faces”, ignoring pandemic precautions and touching customers without their consent. As a result, the tenant was not permitted to attend at RH’s business; in other words, she was “barred”. The tenant acknowledged that this recounting was correct but claimed that “everyone” was drinking, and she was the “only one who had to follow the rules”.

The landlord testified there have been countless complaints from other occupants of the building regarding the tenant’s behaviour and the reported problem of uncollected feces from her dog and submitted several witness statements to this effect. The landlord claimed that neighbours are upset by the tenant and her actions, especially when she has been drinking.

In support of the landlord’s reasons for ending the tenancy, the landlord submitted

substantial supporting evidence including many written statements from neighbours and building occupants.

One such signed statement was from neighbour DM referencing her partner A who uses a wheelchair. The statement is dated February 12, 2020. A copy of which was submitted, which stated in part as follows:

> [Tenant's] music is loud, she drinks and is very belligerent and screams at us my partner [A.] and I. We have had issues with her parking in the handicapped parking. [A.] is in a wheelchair. [Tenant] is not she can walk up and down stairs.
>
> Her dog is always off leash. We do not feel safe. [Tenant] causes many issues that affect us living here.
> …
> I have witnessed her not keeping social distance when I have ask her politely.

The landlord testified he has repeatedly given the tenant verbal warnings that her conduct is unacceptable, and she must stop, or he will issue a notice to end the tenancy. The landlord stated that matters have only become worse with the tenant claiming harassment and filing a civil action. The landlord accordingly issued the Notice on September 19, 2020 which is the subject of this hearing.

The landlord submitted a comprehensive document package including many strata incident reports, notices of complaints, and notices of alleged bylaw violations, all of which the landlord testified had been provided to the tenant and which the tenant acknowledged receiving. These documents included Notices of Complaints from the strata dated January 9, 10, 15(2), July 23, August 4 and September 8, 2020. Reference is made to the July 23, 2020 complaint which stated as follows:

> *It was reported that you and a guest were on the BBQ deck [location] each with an off-leash dog. Additionally, it was reported that the off-leash dogs left behind excrement that was not picked up.*
>
> *It was also reported that there was a "load" of garbage left behind by you and your guest.*

The tenant acknowledged she is aware of the complaints and has received copies of documents referenced by the landlord. Nevertheless, she asserted that the landlord has not complied with his duty to provide her with a comprehensive written letter of

complaint and the complaints were unfair or exaggerated.

Despite some acknowledgements, the tenant claimed that the landlord and other witnesses were “lying” about the reasons for issuing the Notice and that “everyone is ganging up on me”. The tenant submitted a lengthy written statement disputing the claims; she included copies of correspondence to the strata in which she complained many times about various issues.

The tenant requested that the Notice be cancelled. The landlord requested an Order of Possession.

Analysis

Section 47 of the Act allows a landlord to end a tenancy on one month’s notice for certain reasons.

Section 47(1)(d) of the *Act* states in part:

> ***Landlord's notice: cause***
> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
> *…*
> *(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,…*

Pursuant to section 88 of the *Act*, and based on the submissions of both parties, the landlord issued the Notice dated September 19, 2020; the tenant acknowledged service effective September 22, 2020 and filed an application to dispute on September 21, 2020 within the time period allowed.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice.

In reaching my Decision, I have considered the documentary evidence and the testimony of each of the participants. Given the contradictory testimony and positions of the parties, I must turn to a determination of credibility.

Considered in the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, calm and forthright. I accept their testimony as believable as it was supported by well-organized and complete documentary evidence, including first-hand accounts from many witnesses. The landlord provided consistent, logical, credible testimony.

Based on the foregoing, I prefer the landlord's evidence to the tenant's version of events. For these reasons, where the evidence of the parties conflicts, I prefer the landlord's version.

Based on the parties' uncontradicted testimony and a review of the Notice, I find the Notice complied with section 52 of the *Act*.

I accept the landlord's testimony that he verbally informed the tenant many times that she must cease behaviour found objectionable and offensive by him and other occupants of the building. I find the landlord has provided sufficient written warning to the tenant by providing her with Notices of Complaints from the strata dated January 9, 10, 15(2), July 23, August 4 and September 8, 2020, receipt of which the tenant acknowledged.

The tenant acknowledged she knew that the landlord intended to issue the Notice if the complaints about her behaviour did not stop. I find the tenant was aware of the landlord's complaints and the nature of the behaviour he and other occupants found objectionable. I find the tenant was cognisant of why the landlord was seeking to end the tenancy.

Considering the totality of the landlord's evidence, I find that the landlord has met the burden of proof on a balance of probabilities that the tenant significantly interfered with or unreasonably disturbed the occupant DM and the landlord; as a result, I find the landlord has established grounds for the issuance of the Notice under section 47(1)(d)(i). I find the tenant has engaged in uncooperative and disruptive behaviour causing distress and disturbance to DM and the landlord meeting the standard of proof under this section.

I therefore dismiss the tenant's application to cancel the Notice and I uphold the Notice.

Referenced earlier, section 55(1) of the *Act* reads as follows:

> ***55*** *(1) If a tenant makes an application for dispute resolution to dispute a*

*landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(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.

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's Notice complies with the *Act*, I find that this tenancy ended on the corrected effective date in the Notice of October 31, 2020.

As the tenant is still in occupation of the unit, the landlord is therefore entitled to an Order of Possession effective two days after service.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be 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: November 19, 2020

Residential Tenancy Branch