Dispute Resolution Services

Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, 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"); 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, and eight witnesses for the Landlord who are also occupants of the residential property. All testimony provided was affirmed. As the Landlord acknowledged receipt of the Application and the Notice of Hearing and raised no concerns regarding service, the hearing proceeded as scheduled. As the parties acknowledge receipt of each other's documentary evidence and neither party raised concerns regarding receipt or service timelines, I accepted all of the documentary evidence before me from both parties for consideration, with the exception of two audio files submitted by the Tenant that neither the Landlord nor I could access.

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 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

All witnesses were excluded from the proceedings except when providing evidence and testimony.

Although the Landlord called 8 witnesses, only the testimony of seven witnesses was heard by me as the 8th witness appeared very late in the hearing while the Tenant was proving their evidence and testimony and stated that they simply planned to reiterate what had already been covered by the Landlord, the other witnesses, and the documentary evidence before me from the Landlord. As a result, an in order to allow the Tenant a fulsome opportunity to respond to the allegations against them, I declined to hear testimony from the 8th witness (R.A.).

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 is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the Tenant rents a room in a house where common space (kitchen, bathrooms, etc.) is shared with other occupants of the residential property who are also tenants of the Landlord. The parties also agreed that the tenancy stared in April of 2015 under a verbal tenancy agreement with the previous owner of the property, that the current Landlord took over ownership of the property, and therefore this tenancy, in 2016, that the Landlord holds a security deposit initially paid by the Tenant in the amount of \$150.00, and that rent in the amount of \$350.11 is due each month. However, the parties disputed whether rent was due on the 1st day or the 15th day of each month with the Landlord arguing that it was due on the 1st and the Tenant arguing it was due on the 15th.

The Landlord stated that there have been numerous issues with the conduct of the Tenant over the last few years which have resulted in significant safety concerns for the property and its occupants, damage to the rental unit, and significant and unreasonable disturbances to both the Landlord and other occupants of the residential property. The Landlord stated that 12 written warning letters to the Tenant have been issued since January 2019, copies of which have been submitted for my review. In the warning letters, the last of which is dated August 19, 2020, the Landlord clearly describes the Tenants unacceptable behavior, including but not limited to, leaving water running when not in the kitchen, leaving water boiling on the stove for long periods of time while not in the kitchen, repeatedly boiling over pots causing water overflow and damage to the property, disturbances to other occupants of the residential property late at night by watching loud television or playing music, and causing the fire alarm to be set off on several occasions. Most recently the Landlord stated that the Tenant set off the fire alarm on September 13, 2020, at 4:00 A.M. due to leaving items on the stove while not in the kitchen, which caused significant disturbance to the other occupants of the property, as the house was filled with smoke and the fire alarm woke everyone up. The Landlord also stated that this is a very serious fire safety concern.

As a result of the above, the Landlord stated that a One Month Notice was personally served on the Tenant on September 26, 2020. The Tenant confirmed personal receipt on September 26, 2020, during the hearing.

The One Month Notice in the documentary evidence before me, signed and dated September 26, 2020, has an effective date of October 31, 2020, and states that the Landlord has served the notice because:

- 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;
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - o put the landlord's property at significant risk; and
- the tenant has not repaired damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time.

In the details of cause section of the One Month Notice the Landlord wrote "See the attached sheet" and provided a copy of the four page document served on the Tenant

along with the One Month Notice. In this document the Landlord details the reasons for the issuance of the One Month Notice.

During the hearing the Landlord called 7 witnesses, who are also occupants of the residential property, who all testified that they have been significantly interfered with or unreasonably disturbed by the Tenant and that they feel that their safety is at risk because the Tenant has, on several occasions, left items unattended on the stovetop for long periods while it was on, causing the house to fill with smoke and the smoke detector to go off. The Occupants testified that this has significantly disturbed them, as several times this occurred late at night or early in the morning, and that they have significant safety concerns as a result, as they fear that the house could have burned down, putting both the property and all of their lives at risk.

The Landlord and witnesses also stated that the Tenant:

- abuses utilities by leaving the lights on and the water running;
- often monopolizes the entire cooktop for hours on end making it impossible for other occupants to use the shared kitchen;
- boils towels in water on the cooktop for hours at a time causing splatters and water overflow, which is damaging the property and is a safety risk, as a previous occupant injured themselves on the wet floor;
- has monopolized the use of shared storage on the property;
- has removed other occupants' property from the shared storage area without consent, damaging those items; and has
- Repeatedly disturbed other occupants of the shared property by watching loud shows or playing loud music in the kitchen late at night, banging on other occupants' windows late at night, attempting to enter other occupants' rooms without consent, and walking or stomping loudly on the floor during both the day and night.

In addition to the above noted testimony from the Landlord and witnesses, the Landlord also submitted numerous videos and written complaints from occupants of the property in support of the above noted allegations and the issuance of the One Month Notice.

Although the Tenant acknowledged leaving an item on the stove while it was on and unattended on September 13, 2020, causing smoke and the fire alarm to go off at approximately 4 A.M., they denied that any such incident has occurred before as alleged by the Landlord and witnesses. Although much of the Tenant's documentary evidence and testimony was unrelated to the issuance of the One Month Notice, such as allegations that the Landlord has restricted services and facilities and interpersonal conflicts with other occupants of the residential property or the Landlord, the Tenant argued that the One Month Notice has not been served in good faith as the Landlord is simply trying to evict them in order to charge more rent for the room, that the Landlord is attempting to influence other occupants of the rental unit to dislike them in an effort to have them evicted, and denied that the majority of the allegations against them are true or as significant and frequent as claimed by the Landlord or the witnesses.

The Tenant also submitted significant documentary evidence in support of their testimony, including lengthy written submissions, videos of disputes with other occupants of the residential property, file numbers for 4 previous Applications with the Brach, and two audio recordings which could not be opened by either myself or the Landlord.

The Landlord sought an Order of Possession for December 31, 2020, if the One Month Notice is upheld and the Tenant sought authorization to withhold \$100.00 from the next months rent if they were successful in their Application.

<u>Analysis</u>

Based on the documentary evidence and testimony before me for consideration, I find that the Tenant was personally served with the One Month Notice on September 26, 2020.

Section 47(1) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- 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;
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

In their documentary evidence the Tenant provided file numbers for 4 previous Applications with the Branch in support of their position that the Landlord is simply trying to have them evicted without cause and that the One Month Notice has therefore not been served in good faith. I have reviewed the files referred to by the Tenant and while I agree that they demonstrate that several past notices to end tenancy served by the Landlord were found to be invalid, I do not agree that they demonstrate bad faith on the part of the Landlord.

While I acknowledge that a decision rendered on November 21, 2017, states that an arbitrator was not satisfied that a two month notice had been served in good faith, this decision was rendered almost three years prior to the notice to end tenancy before me for dispute and for an entirely different purpose. As a result, I am not satisfied that it demonstrates, in any meaningful way, that the current notice to end tenancy is invalid. One of the decisions referred to by the Tenant did not even relate to a notice to end tenancy but instead related to claims by the Tenant for compensation and orders that the Landlord comply with the Act, regulation, or tenancy agreement, all of which were dismissed by the arbitrator except for a claim for reimbursement of a bicycle for which the Tenant was awarded \$50.00. As a result, I do not see how this decision has any bearing on the matter before me.

Finally, although two other notices to end tenancy were dismissed by arbitrators in the past, I note that these were dismissed in 2016 and not as a result of findings that the Landlord had not acted in good faith. In once case a 10 Day Notice was overturned not because the 10 Day Notice was invalidly issued, as there was no disagreement that the Tenant had not paid the rent, but because the Arbitrator found that the Tenant was deemed served at a significantly later date than would normally apply under the Act due to the Tenant's absence from the country, and therefore rent was paid within the 5 days allowable under the Act after the date on which the arbitrator deemed the Tenant to have been served with the 10 Day Notice. In the other case, a One Month Notice was dismissed not because the arbitrator was not satisfied that the Tenant had disturbed the Landlord, but because they were not satisfied that the disturbances were significant enough to warrant ending the tenancy or that Tenant had been sufficiently warned that if the behavior which gave rise to this disturbance continued, it would result in an eviction. The arbitrator in that case also was not satisfied that a term of the tenancy agreement violated by the Tenant was a material term of the tenancy agreement as argued by the Landlord, or that there was sufficient evidence to establish to the arbitrator's satisfaction that false claims had been made to the police/municipality by the Tenant, that the Tenant had significantly interfered with or unreasonably disturbed other occupants as set out in the One Month Notice or that the Tenant posed any risk to the health and safety, or lawful right, or the landlord or other occupants.

I find this matter markedly different from the last matter set out above as in this case, the Landlord has submitted copies of 12 written warning letters to the Tenant issued since January 2019, with the last one dated August 19, 2020. In the warning letters the Landlord clearly describes the Tenants unacceptable behavior, including but not limited to, leaving water running when not in the kitchen, leaving water boiling on the stove for long periods of time while not in the kitchen, repeatedly boiling over pots causing water overflow and damage to the property, disturbances to other occupants of the residential property late at night by watching loud television or playing music, and causing the fire alarm to be set off on several occasions late at night, most recently on September 13, 2020, due to leaving items on the stove while not in the kitchen. The Landlord called 7 witnesses during the hearing who testified that the Tenant has repeatedly, significantly, and unreasonably disturbed them due to the above noted behaviour and that they have serious concerns for their safety and the safety of the property due to the Tenant's repeated inattention to items on the stove which have caused a significant amount of smoke and set of the fire alarm.

The Landlord also submitted a significant number of written complaints about the Tenants above noted behavior from other occupants of the property and photos and videos demonstrating this behavior. As a result, I am satisfied by the preponderance of documentary evidence and affirmed testimony before me from the Landlord and the witnesses that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and put the landlord's property at significant risk.

I am also satisfied by the Landlord that they are acting honestly, that they have not intended to defraud or deceive the Tenant or the Branch, and that they do not have an ulterior motive for ending the tenancy as argued by the Tenant. As a result, I dismiss the Tenant's allegation that the Landlord has not served the One Month Notice in good faith as without merit. Based on the above, I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

As I am satisfied that the One Month Notice complies with section 52 of the Act, I find that the Landlord is entitled to an Order of Possession for the room rented by the Tenant and any common areas of the property to which the Tenant has access under their verbal tenancy agreement. As the effective date of the One Month Notice, October 31, 2020, has passed, and the Landlord indicated during the hearing that they were seeking an Order of Possession for the rental unit for December 31, 2020, I

therefore grant the Landlord an Order of Possession for the rental unit effective 1:00 P.M. on December 31, 2020, pursuant to sections 55(1) and 68(2)(a) of the Act.

As the Tenant was unsuccessful in their Application, I decline to grant them recovery of the \$100.00 filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **1:00 P.M. on December 31, 2020, 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 the costs of such enforcement 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 Act.

Dated: December 11, 2020

Residential Tenancy Branch