



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero International Realty
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDCT OLC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

LT ("landlord") represented the landlord in this hearing. Both parties 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.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the Application. All parties confirmed receipt of each other's' evidentiary materials.

Both parties confirmed in the hearing that the tenant was initially served with only the first page of a 1 Month Notice to End Tenancy for Cause, which was posted on her door on October 26, 2020. As the tenant was not properly served with all three pages with the 1 Month Notice, the landlord served the tenant with all three pages on November 11, 2020. The tenant confirmed she was served with a new copy of the 1 Month Notice dated October 26, 2020 containing all three pages on November 11, 2020. As the tenant confirmed receipt of the entire 1 Month Notice on November 11, 2020, I find the tenant duly served with the 1 Month Notice to End Tenancy on November 11, 2020. As section 53(1) of the *Act* allows for the automatic correction of effective dates, and as the

1 Month Notice was not properly served to the tenant until November 11, 2020, I find the new corrected, effective date of the 1 Month Notice to be December 31, 2020.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy originally began as a fixed-term tenancy on December 1, 2010. Monthly rent is currently set at \$943.00 per month, payable on the first of every month. The landlord collected a security deposit in the amount of \$400.00, which they still hold.

The landlord served the tenant with the notice to end tenancy dated providing the following grounds:

- 1) "tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord"; and
- 2) "tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant".

The landlord provided the following reasons for why they are seeking an Order of Possession on the grounds provided on the 1 Month Notice. The landlord testified that the tenant has repeatedly harassed another tenant in the building due to her belief that the other tenant continues to smoke in or near her unit, causing the tenant applicant great distress. The landlord testified that the tenant has been sent warning letters about her behaviour, which includes stomping, making excessive noise, sending numerous notes directly to the tenant, slamming doors, and posting notices in the lobby without the landlord's consent. The landlord acknowledged that the building is a non-smoking

building, but the other tenant has denied smoking except in the laneway. The landlord testified that they have investigated the issue, and have not found conclusive evidence to support that the tenant has smoked inside her unit. The tenant filed an application for dispute resolution requesting an order for the landlord to address the issue, and a hearing was held on September 10, 2020. In the September 11, 2020 decision, the Arbitrator dismissed the application without leave to reapply after finding that there was insufficient evidence to support the tenant's allegations. The tenant was discouraged from interacting with the other tenant, M.H., and it was suggested that she direct her concerns to the landlord.

M.H. testified in the hearing that she has been harassed since mid-June 2020, and feels that the tenant continues to harass her on a daily basis. M.H. testified that in addition to the stomping, banging, and notes under her door, the tenant has posted notes in the lobby containing her information. The landlord provided copies of the notices that contained handwritten notes to M.H. on the notices., including M.H.'s unit number. The landlord testified that there were 16 units in the building, and that M.H. feels threatened by the tenant's behaviour.

The tenant feels that the landlord had issued the 1 Month Notice to End Tenancy in retaliation. The tenant testified that she continues to experience a great deal of stress and loss of quiet enjoyment due to the ongoing smoke, and landlord's failure to address the issue. The tenant submitted a medical note from an allergist dated October 2, 2020 which stated the following:

"S is a patient who started experiencing rhinitis symptoms around the time she claims a neighbour started to smoke. This history would suggest irritant rhinitis. There is no diagnostic test for irritant rhinitis...as this condition is caused by irritation as opposed to an immune-mediated reaction. I did discuss there is testing available for allergy rhinitis, but she is not interested at this time".

The tenant is seeking a monetary order equivalent to one month's rent in compensation, as well as an order for the landlord to address the smoking and her right to quiet enjoyment. The tenant disputes the landlord and M.H.'s allegations of harassment. The tenant denies causing the disturbances described, and is certain that M.H. is the source of the smoke that has permeated her rental unit. The tenant submitted an affidavit in her evidentiary materials outlining the events from her perspective. The tenant stated that after the last hearing, the tenant was "afraid that the Tenant would start smoking more often now that this decision had been released. I had a copy of the notice that the Property Manager had told the Tribunal that she posted in the lobby. I decided to post this notice in the lobby, because I thought the Property Manager had intended to post it, but the Tenant had taken it down (Exhibit N). The tenant stated that she had slipped the notes under M.H.'s door as she felt the building manager would not help her. The tenant states that August 3, 2020 was the last time she had left a note under the Tenant's door. The tenant provided copies of the notes in her evidence. The tenant expressed frustration in her affidavit as well as in the hearing about the ongoing issue with the

smoking, and the landlord's failure to address the issue. Instead, the tenant feels that the landlord is attempting to end this tenancy, and avoid dealing with the tenant's concerns.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As noted earlier, the tenant was originally served the 1 Month Notice on October 26, 2020, and filed her application on November 3, 2020. As the tenant was not served with all three pages, the landlord had served her with the complete Notice on November 11, 2020. As the tenant had filed her application earlier in response to the receipt of the first page, I find that the tenant had filed her application disputing the 1 Month Notice within the required period. Having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

In light of the evidence before me, I find that the tenant has become quite frustrated by smoke that the tenant has continued to experience in her rental unit, and the fact that she has not experienced any relief despite her continued attempts to address it. The landlord submits that the tenant has taken this frustration out directly on the other tenant by making excessive noise, leaving notes, and posting the other tenant's identifying information in the lobby. In light of the disputed facts around the noise, I am unable to confirm that the noise described by the landlord and other tenant was made on an intentional basis for the purposes of harassing the other tenant. However, I have reviewed the documents submitted and find that a Notice was posted in the lobby of the building with handwritten notes identifying the other tenant. The tenant noted in her affidavit that she had reposted the Notice after the last hearing as she was concerned that the smoking would continue, and more often. I note that the landlord provided in their evidence package a copy of the Notice that was posted containing handwritten notes addressed to M.H. with her unit number. I find that the handwriting is identical to the handwriting in the notes that were slipped under M.H.'s door in August 2020.

Whether M.H. has been indeed been infringing on the tenant's rights or not, I do not find that the tenant had the right to post the Notice in the lobby, especially with M.H.'s identifying information such as her unit number. I find this action particularly aggravating and troubling in light of the fact that the Arbitrator, in her decision, discouraged the tenant from interacting with the other tenant, and suggested that she direct her concerns to the landlord. I find that the tenant was not justified, despite her frustration or concerns, in posting this Notice containing the handwritten notes and reference to M.H.'s specific rental unit. I find that the tenant had disregarded the warning of the Arbitrator, and does not consider her actions to be disturbing or

unreasonable. Whether the tenant was frustrated or not, I do not find that the tenant's actions were justified. In light of the evidence before me, I am satisfied that the landlord had provided sufficient evidence to support that the tenant has significantly interfered with and disturbed another tenant. Although I am sympathetic to the tenant's frustrations or concerns, I find that the tenant's actions are significant and serious enough to justify the end of this tenancy.

Under these circumstances, I am dismissing the tenant's application to cancel the landlord's 1 Month Notice.

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 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.

I find that the landlord's 1 Month Notice is valid, and complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 1 Month Notice, which was December 31, 2020. As the tenant did not move out by that date, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenant also filed an application for a monetary order equivalent to one month's rent related to her loss of quiet enjoyment, and for an order for the landlord to comply with the *Act*.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Although the tenant submitted a document from her medical provider confirming that it is likely that she is suffering from irritant rhinitis, which could be caused by irritation from smoke, and I am not satisfied that the evidence submitted supports that the tenant's medical condition is due to the landlord actions or failure to comply with the *Act*. As this is a multi-unit building, with many occupants, I find that it is difficult for the landlord to determine whether the smoke originated from a specific tenant's suite, or was due to another tenant smoking on the property. I find that the landlord had investigated the matter, and was unable to confirm that the smoke was from the other tenant. I do not find the actions of the landlord to be retaliatory or in contravention of the *Act*. On this basis, I dismiss the tenant's application for a monetary order without leave to reapply.

As I am not satisfied that the landlord had contravened the *Act*, I dismiss the tenant's application for any further orders.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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 filed and 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: January 26, 2021

Residential Tenancy Branch