



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

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
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement.

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 and an agent for the Landlord (the Agent), both of whom provided affirmed testimony. As the Agent acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and raised no concerns regarding service or timelines, the hearing therefore proceeded as scheduled. As the parties also acknowledged receipt of each other's documentary evidence and neither party raised concerns with regards to service, timelines, or the exclusion of this documentary evidence, I have therefore accepted all of the documentary evidence before me from both parties for consideration. 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 Tenant, a copy of the decision will be mailed to them at the rental unit. At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be email to them at the email address provided in the Application.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that the Landlord named in the Application and the Landlord named in the tenancy agreement were different. The parties agreed that the Landlord named in the tenancy agreement, a corporation, is the Landlord and that the respondent named as the Landlord in the Application was actually an agent for the Landlord.

With the agreement of the parties, the Application was amended to name the corporate Landlord named in the tenancy agreement as the Landlord and to remove the agent for the Landlord who had been personally named as the respondent.

Preliminary Matter #2

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. As I find that the Tenant's claim for an order for the Landlord to comply with the Act, regulations, or tenancy agreement is not sufficiently related to One Month Notice, I exercise my discretion to dismiss this claim with leave to reapply.

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

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Issue(s) to be Decided

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

If the Tenant's Application seeking cancellation is dismissed or the One Month Notice is upheld, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy agreement commenced on June 1, 2016, and was set to continue on a month to month basis at the end of the fixed term on May 31, 2017. The tenancy agreement states that rent in the amount of \$1,225.00 is due on or before the first day of the month and that a \$612.50 security deposit was required.

At the hearing the parties confirmed that these are the correct terms for the tenancy agreement entered into, that the tenancy continued on a month to month basis after the fixed term expired, and that the \$612.50 security deposit was paid by the Tenant, the entirety of which the Landlord currently holds in trust. Although the parties agreed that rent has increased since the start of the tenancy, they could not agree on the amount currently owed for rent, with the Agent stating it was \$1,354.15, plus a \$60.00 parking fee, and the Tenant stating that it was \$1,415.00, including a \$25.00 parking fee.

The Agent stated that on Sunday October 11, 2020, at approximately 3:00 A.M. the Tenant significantly disturbed the occupant of the rental unit beside them by loudly banging on the wall between the rental units. The Agent pointed to an email in the documentary evidence before me sent from the occupant of the adjacent rental unit to the Landlord at 9:26 A.M. on Tuesday October 13, 2020, stating that the Tenant had aggressively banged on the wall between their units at 3:00 A.M. on the Sunday prior, startling them awake, and requesting that they be moved to another unit as this was an

ongoing issue. The Agent stated that the following day, Monday October 12, 2020, at approximately 3:00 A.M., the Tenant went upstairs to the rental unit above them in an attempted to confront the occupants of that rental unit, and that when the occupants refused to open the door, the Tenant attacked the door with a hammer, resulting in police attendance and damage to the door. The Agent pointed to several emails in the documentary evidence before me, one of which contains the police file number for the above noted incident, and one of which is an email sent at 3:20A.M. on October 12, 2020, to the Landlord by the occupant of the rental unit above the Tenant's, stating that the Tenant had smashed their door with a hammer at 3:00 A.M. and that the police had been called. The email from the other occupant stated that they were "scared to death" of the Tenant, referred to the Tenant's behaviour as "insane" and demanded that immediate action be taken by the Landlord.

The Agent stated that the One Month Notice was posted to the door of the Tenant's rental unit on November 2, 2020, as a result of the above noted incidents, and at the hearing the Tenant acknowledged receipt on that date. The One Month Notice in the documentary evidence before me is dated November 2, 2020, has an effective date of December 31, 2020, and states that it has been served because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Tenant did not submit a copy of the One Month Notice as part of their Application and the copy before me from the Landlord does not contain a name or signature for the person issuing the One Month Notice. However, during the hearing the Agent and the Tenant confirmed that their copies both contain a name and signature for the Agent, who issued the One Month Notice. The above noted incidents were listed in the details of cause section of the One Month Notice as grounds for issuance of the notice.

Although the Tenant denied disturbing the Tenant in the adjacent rental unit, they acknowledged that at approximately 3:00 A.M. on October 12, 2020, they took a short handled axe with them up to the rental unit above them, and banged on the door with it, causing some damage. Although the Tenant argued that this damage was not significant, as they had used the blunt side of the axe and the door could still be used, they acknowledged that it was still damaged. Despite agreeing that they had engaged in the above noted activity, they justified their behavior as reasonable, stating that they are elderly, have a medical condition that is exacerbated by stress and lack of sleep, and have been continually disturbed by the occupant of that rental unit for two and a half years and simply wanted them to know what it was like to be disturbed by loud noise. They also argued that it is the Landlord's repeated failure to protect their right to quiet enjoyment that resulted in their behavior, and therefore the tenancy should not end by

way of the One Month Notice. Finally, the Tenant stated that it would be difficult for them to find alternate accommodation and dangerous to their health due to their medical conditions and age, to have to move during the pandemic.

Although the effective date for the One Month Notice, December 31, 2020, had passed, the Agent sought an Order of Possession for 1:00 P.M. on February 28, 2021, to give the Tenant some additional time to find alternate accommodation and clean and vacate the rental unit.

Analysis

Section 47(1)(d) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

Although the Tenant argued that their behaviour on October 12, 2020, was reasonable due to extenuating circumstances, such as their age, their medical conditions, and the Landlord's repeated failure to protect their right to quiet enjoyment, and therefore the tenancy should not end by way of the One Month Notice, I disagree. Being a senior, having medical conditions, and being of the opinion that your Landlord has not adequately protected your right to quiet enjoyment does not give a tenant the right to significantly interfere with or unreasonably disturb another occupant or the Landlord.

If the Tenant was concerned about their lack of quiet enjoyment as the result of the behaviour of other occupants of the residential property and the Landlord's response to it, they could have sought an order from the Branch that the Landlord comply with section 28 of the Act. If the Tenant was concerned about noise disturbances on October 11th or October 12th, 2020, they could have contacted the Landlord, the police, or both to resolve the issue. It was not however, open to the Tenant to take an axe with them to another floor of the residential property and bang on the door of another occupant with the axe, causing a significant and unreasonable disturbance to them.

Based on the documentary evidence of the Landlord and the Tenant's own testimony in the hearing, I am satisfied that on October 12, 2020, at approximately 3:00 A.M. the Tenant banged on the door of another rental unit located on the property with an axe. I am also satisfied that this constitutes a significant and unreasonable disturbance to the occupants of the rental unit, who called the police and advised the Landlord over email shortly after the incident that they were "scared to death" of the Tenant. As a result, I

dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

Although the Tenant argued that the door to the other rental unit was not significantly damaged as a result of the incident and therefore the tenancy should not end, I note that the Landlord has not sought to end the tenancy for damage by way of the One Month Notice. As a result, I have not considered the amount of damage caused by the Tenants actions on October 12, 2020, as any basis for ending the tenancy by way of the One Month Notice.

Based on the the copy of the One Month Notice in the documentary evidence before me and the testimony of the parties at the hearing, I am satisfied that the copy of the One Month Notice served on the Tenant complies with section 52 of the Act. Based on the above, and as the Tenant acknowledged receipt of the One Month Notice on November 2, 2020, I therefore grant the Landlord an Order of Possession for the rental unit at 1:00 P.M. on February 28, 2021, pursuant to their request and sections 55 and 68(2)(a) of the Act.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice 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 February 28, 2021, 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 are recoverable from 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: February 3, 2021

Residential Tenancy Branch