



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERGULF DEVELOPMENT (COMO LAKE)
CORP. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, 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; 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 at 9:30 A.M. on February 4, 2020, and was attended by two agents for the Landlord (the Agents), both of whom provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. Although the Agents attended the hearing as scheduled on the Landlord's behalf, they denied receipt of either a copy of the Application or the Notice of Hearing from the Tenant. The Agents stated that after the One Month Notice was served, they heard nothing from the Tenant, and when the timelines for disputing the One Month Notice had passed, they contacted the Tenant to see if they were moving out and were told by

them that they had disputed the One Month Notice. The Agents stated that they and the Landlord waited to be served with the Notice of Dispute Resolution Proceeding Package by the Tenant, but it was never served, and as a result, they contacted the Tenant close to Christmas to obtain the file number for the Application. The Agents stated that using this information, other agents for the Landlord were able to obtain hearing information from the Residential Tenancy Branch (the Branch) which is how they attended the hearing and submitted evidence for my consideration.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Agents and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. Although I verified that the hearing information contained in the Notice of Dispute Resolution Proceeding provided to the Tenant by the Branch was correct, and the line remained open for 21 minutes, neither the Tenant nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

Although the Agents stated that the Landlord was not served with notice of the hearing and a copy of the Application by the Tenant as required by the Rules of Procedure and section 59(3) of the Act, they stated that they wished to proceed with the hearing as scheduled as the Landlord wished to obtain an Order of Possession for the rental unit as a result of the Tenant's Application seeking cancellation of the One Month Notice, pursuant to section 55 of the Act. As a result, and pursuant to rule 7.3 of the Rules of Procedure, the hearing proceeded as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

The Agents stated that the documentary evidence before me from the Landlord was personally served on the Tenant by them more than 14 days prior to the date of the hearing, although they could not provide me with an exact date. As there is no evidence before me to the contrary, I find that the Landlord's documentary evidence was served on the Tenant as required by the Act and the Rules of Procedure and I therefore accept it for consideration in this matter.

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 Agents, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

I noted at the outset of the hearing that the name of the Landlord listed on the tenancy agreement, which appears to simply be the street address for the building, does not match the name of the Landlord listed in the Application. At the hearing I inquired with the Agents about the correct name for the Landlord as it would impact the enforceability of any orders issued, and they stated that the name of the Landlord listed in the Application is correct.

Issue(s) to be Decided

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 from the Landlord states that the month to month (periodic) tenancy commenced on September 1, 2018, that rent in the amount of \$1,182.00 is due on the first day of each month, and that a security deposit in the amount of \$591.00 was required. A one page addendum to the tenancy agreement was also submitted for my review and consideration. Both the tenancy agreement and the addendum were signed August 21, 2018.

The Agents stated that several complaints had been received about the Tenant's behaviour from other occupants of the property, and as a result, a warning letter was sent to the Tenant on August 10, 2020, advising them of the complaints and that if further complaints of that nature were received about them, a One Month Notice would be served. A copy of the warning letter and several written complaints from other occupants of the property about inappropriate behaviour from the Tenant, such as aggression, racism, shouting, inappropriate language, and noise disturbances were submitted.

The Agents stated that near the end of October another complaint was received about the Tenants behavior towards another occupant, that resulted in police attendance and the ultimate arrest of the Tenant. As a result, the Agents stated that the One Month Notice was personally served by them on the Tenant on November 3, 2020.

The One Month Notice in the documentary evidence before is in writing on the approved Branch form, is signed and dated November 3, 2020, has an effective date of December 4, 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; and
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

In the details of cause section on 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.
<p>Details of the Event(s):</p> <p>We have received two complaints (one in August 2020 and one October 2020) from neighboring tenants that they have received verbal discrimination, verbal abuse and banging on their walls/ceiling at various hours of the day and night by Mr. Paul Peck. The neighbours have also expressed that eggs were thrown at their balcony screen door by Mr. Peck. They have expressed stress and fear in regards to their living situation. We issued Mr. Peck a warning notice in August 2020. This warning was delivered in person by Sergei Gud. We informed Mr. Peck that if we were to receive another complaint within a 3 month period we would issue the 30-day notice to end tenancy.</p>

Based on the above, the Agents sought an Order of Possession for the rental unit effective February 28, 2021, at 1:00 P.M. as rent for use and occupancy of the rental unit for the month of February has been paid by the Tenant.

Neither the Tenant nor an Agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the tenancy agreement in the documentary evidence before me from the Landlord, I find that a residential tenancy to which the Act applies exists, and that rent is

due on the first day of each month. Based on the undisputed and affirmed testimony of the Agents, I am also satisfied that the One Month Notice in the documentary evidence before me was personally served on the Tenant on November 3, 2020.

Section 47(1) 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 or the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

I have before me letters from several other occupants of the property who state that the Tenant has exhibited aggressive, racist, demeaning, and inappropriate behavior towards them, or that they have witnessed the Tenant behaving this way towards other occupants, and that the Tenant has caused other disturbances, such as noise disturbances, at the property. I also have before me a warning letter from the Landlord to the Tenant dated August 10, 2020, stating that several complaints had been received about the their behaviour from other occupants of the property and advising them that if further complaints of that nature were received about them, a One Month Notice would be served.

Based on the undisputed documentary evidence and affirmed testimony before me from the Agents, I am satisfied that subsequent to the warning letter dated August 10, 2020, the Tenant significantly interfered with and unreasonably disturbed another occupant of the property at the end of October 2020, resulting in police attendance and the Tenant's arrest. As a result, I am satisfied on a balance of probabilities that the Landlord had grounds to serve the One Month Notice and end the tenancy pursuant to section 47(1)(d)(i) of the Act, and I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

As the Tenant did not appear at the hearing of their own Application to provide any evidence or testimony regarding their claim for an Order for the Landlord to comply with the Act, regulations, or tenancy agreement, I also dismiss this portion of their claim without leave to reapply. As the Tenant's Application has been dismissed in its entirety, I decline to grant them recovery of the filing fee.

The One Month Notice in the documentary evidence before me is signed and dated by an agent for the Landlord, gives the address of the rental unit, states the effective date

of the One Month Notice and the reason for ending the tenancy, and is in writing on the approved Branch form. As a result, I find that it complies with section 52 of the Act.

Although the effective date of the One Month Notice is December 4, 2020, the Agents testified that the One Month Notice was personally served on November 3, 2020, and that tenancy agreement states that rent is due on the first day of each month. As a result, I find that this date does not comply with the minimum notice period required under section 47(2) of the Act. Nevertheless, I find that the effective date is therefore automatically corrected to December 31, 2020, pursuant to section 53 of the Act.

As the One Month Notice complies with section 52 of the Act, the corrected effective date of the One Month Notice, December 31, 2020, has passed and the Agents testified that rent has been paid in full for use and occupancy of the rental unit for February 2021, I therefore grant the Landlord an Order of Possession for 1:00 P.M. on February 28, 2021, as requested at the hearing and pursuant to sections 55 and 68(2)(a) of the Act.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective at **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 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: February 4, 2021

Residential Tenancy Branch