



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 dated January 7, 2020 (the First Notice);
- Cancellation of a One Month Notice to End Tenancy for Cause dated January 11, 2020 (the Second 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, the Tenant's Advocate (the Advocate), a witness for the Tenant (the Witness), the property owner (the Landlord), the Landlord's spouse, and the property manager D.M. (the Agent). All testimony provided was affirmed. The Landlord acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and both parties acknowledged receipt of the documentary evidence before me from each other. As a result, and as neither party raised any concerns regarding service or timelines, I accepted the documentary evidence before me for consideration and the hearing proceeded as scheduled. 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 confirmed in the hearing.

Preliminary Matters

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 two separate One Month Notices, I find that the priority claims relate to the validity of the One Month Notices and whether the tenancy will continue or end. I therefore exercise my discretion to dismiss the Tenant's Application seeking an order for the Landlord to comply with the Act, regulations or tenancy agreement, with leave to reapply.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the First Notice and the Second Notice.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the First Notice and/or the Second Notice?

If the Tenant's Application is dismissed or one or both of the Notices are 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, signed on January 26, 2015, states that the month to month tenancy commenced on February 1, 2015, that rent in the amount of \$700.00 was due on the first day of each month at the start of the tenancy, and that a \$350.00 security deposit was paid. The tenancy agreement also states that the Tenant is to hook up and pay for their own electricity and if water meters are installed, that the Tenant will be responsible to pay for their own water usage.

A copy of a previous decision dated May 25, 2020, from the Residential Tenancy Branch (the Branch) regarding this tenancy was submitted for my review and consideration wherein the arbitrator stated that rent was currently \$750.88 per month, that the Landlord collected a security deposit from the Tenant at the start of the tenancy in the amount of \$350.00 which was still held in trust by them at the time of the previous hearing on May 23, 2020, and that no pet damage deposit was collected. The arbitrator also stated that the rental unit is one of 16 townhouses in a townhouse complex owned and operated by the Landlord.

At this hearing neither party disputed any of the above information relating to the terms of the tenancy agreement, rent, or the types and amounts of deposits paid by the Tenant and held in trust by the Landlord.

The previous decision dated March 25, 2020, related to the Tenant's Application seeking cancellation of a previous One Month Notice to End Tenancy for Cause (the Previous Notice) issued by the Landlord on the basis of a breach of a material term of the tenancy agreement. The material term relied on by the Landlord as the basis of the issuance of the Previous Notice, was the possession of a dog. However, in the March 25, 2020, decision, the arbitrator found that the term of the tenancy agreement prohibiting pets was not a material term of the tenancy agreement and that the Tenant had been granted verbal permission for their dog, and therefore cancelled the Previous Notice. As part of their decision, the arbitrator ordered that the Tenant was permitted to keep the dog, that the Tenant is to ensure that the dog does not interfere with the quiet enjoyment of other residents of the rental complex, and that the Tenant is to refrain from acquiring any more pets without the express consent of the Landlord or an agent of the Landlord.

Regardless of the above noted decision and orders, the Tenant and their Advocate stated that the dog, who was in training to be a service animal at the time of the last hearing, has since been certified by the Justice Institute of British Columbia and the Province of British Columbia as a service dog, and is therefore exempt from any pet clauses or requirements. The Tenant submitted a copy of the guide dog and service dog certificate, which includes a photograph of the Tenant and the name of their dog, issued by the Province of British Columbia, certifying their dog as a service animal and the Tenant and their dog as a service team. The certificate has an expiry date of October 8, 2022. Neither the Landlord, their spouse, nor their Agent disputed that the Tenant's dog is currently a certified service animal.

The Landlord and Agent stated that the First Notice was posted to the door of the rental unit on January 7, 2021, and at the hearing the Tenant confirmed receipt the same date. The Landlord and Agent stated that as they did not keep a copy of the First Notice for their own records, the Second Notice was subsequently personally served on the Tenant on January 11, 2021. At the hearing the Tenant confirmed personal receipt of the Second Notice on January 11, 2021. Copies of both notices were submitted for my review and consideration.

The First Notice is signed and dated January 7, 2021, has an effective date of February 28, 2021, 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;
- the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and
- the tenant has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In the details of cause section of the First Notice it states that the Tenant's pet has been off leash chasing the Landlord and scaring other tenants, that the Tenant refuses to leash their dog despite repeated requests that they do so, that the Tenant has verbally threatened a neighbouring tenant, and that many other tenants are afraid for their safety and requesting that the Tenant be evicted.

The Second Notice is signed and dated January 11, 2021, has an effective date of February 28, 2021, and lists the same grounds for ending the tenancy set out above. In the details of cause section of the Second Notice it states "see attached page 1 of 1". In the attached one page document it states that the Landlord is receiving complaints about the Tenant's out of control temper, which is frightening both adults and children, that the police have been called several times, that they have videos showing violence by the Tenant with a knife and a club, that the Tenant called the Agent on January 7, 2021, threatening the life of a neighbouring tenant, and that the Tenant's dog is running loose in common areas lunging at adults and scaring people. The document also reference three previous written requests on August 29 and October 23, 2020, and January 5, 2021, that the Tenant leash their dog. At the hearing the Tenant acknowledged personal receipt of the Second Notice on January 11, 2021.

While both parties provided a substantial amount of testimony and evidence during the 81 minute hearing, I have found only one matter to be determinative, and as a result, I have summarized the salient points regarding the determinative matter below.

At the hearing the Agent testified that on January 7, 2021, the Tenant phoned them and threatened to go next door to the adjacent rental unit and kill everyone there. The Agent stated that although the Tenant had advised them that they themselves had already called the police in relation to this threat, they called the police themselves that same day and the following day, and subsequently served the First Notice on January 7, 2021, and the Second Notice on January 11, 2021. This phone call and the subsequent issuance of the First Notice and the Second Notice are also noted in a timeline of events submitted on behalf of the Landlord and in the details of cause section of the Second Notice.

At the hearing neither the Tenant nor the Advocate denied that the Tenant called the property manager as set out above, threatening to harm the occupants of the adjacent rental unit. However, in a document titled "overview_of_entire_dispute.docx" submitted by the Tenant, the Tenant references phone calls to the police and the Agent on an unspecified date several days before the issuance of the First Notice, as a result of a parking issue with their neighbour. In this document the Tenant stated that they told the police officer in anger that were crazy for suggesting that they go next door and ask their neighbour to move their vehicle and that if they did that, blood would most likely be shed and most likely it would be their own. In this document the Tenant stated that after they calmed down they called the Agent to explain that they could not even get in their van to go to the store because the neighbours people were blocking their door, and that they got upset when the Agent said there was nothing she could do. In the document the Tenant states that they explained to the Agent that she could not only call the Tenant's neighbour and tell her to have the car moved but could also serve her with an eviction notice for non-compliance with her previous warning and that when the Agent disagreed, the Tenant told them the same thing that they told the RCMP, that they were in fear that they or their dog might be injured and hung up.

The Tenant and the Advocate also argued that the Tenant is a victim with regards to the interaction with their neighboring Tenant, not the aggressor.

Analysis

Based on the documentary evidence before me and testimony of the parties at the hearing, I am satisfied that a tenancy to which the Act applies exists. For the following reasons, I am also satisfied that the Landlord has cause to end the tenancy pursuant to sections 47(1)(d)(i) and (ii) of the Act.

The Tenant acknowledged personally receiving the Second Notice on January 11, 2021, and I find that the Second Notice complies with section 52 of the Act as it is in writing on the approved form, is signed and dated by the Agent, who gave the notice and who I am satisfied meets the definition of a landlord under section 1 of the Act, gives the address of the rental unit, and states the effective date of the notice and the grounds for ending the tenancy.

Sections 47(1)(d)(i) and 47(1)(d)(ii) of the Act state that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. At the hearing Agent testified that on January 7, 2021, the Tenant phoned them and threatened to go next door to the adjacent rental unit and kill everyone there. I take this threat seriously, as did the property manager, who called the police and subsequently issued two notices to end tenancy, one that same day on January 7, 2021, and one on January 11, 2021.

At the hearing neither the Tenant nor the Advocate denied that the Tenant uttered the above noted death threat to the Agent on January 7, 2021, in relation to the neighbouring tenant and although the Tenant references a phone call to the police and to the Agent in their written evidence, they indicated that this conversation occurred several days before the issuance of the First Notice. As a result, I am satisfied on a balance of probabilities, that the conversations referred to in their written submissions were not the same conversations referred to by the Agent in the hearing or the Second Notice. As a result, I am satisfied on a balance of probabilities that the Tenant therefore threatened the life of the neighboring tenant while on the phone with the Agent on January 7, 2021, which I find constitutes both an unreasonable disturbance to the Agent and the neighbouring tenant, and serious jeopardy to the health or safety of the neighbouring tenant.

Although the Agent and the Tenant argued that the Tenant is a victim of the neighbouring tenant's behaviour towards them, I do not find that this belief, whether accurate or not, gave the Tenant the right to utter death threats against their neighbour.

Based on the above, I find that the Landlord is entitled to an Order of possession for the rental unit pursuant to section 55(1) of the Act. However, the effective date of the Second Notice, February 28, 2021, has passed, and at the hearing and in their written submissions the Tenant requested that the tenancy not be ended earlier than March 31, 2021, pursuant to sections 55(3) and 68(2)(a) of the Act, as they are disabled and need additional time to pack and find suitable specialized housing for themselves and their service animal.

The Tenant also argued that it would cause minimal hardship to the Landlord to extend the effective date of any Order of Possession granted and would not be unfair to the Landlord, as their rent is up-to-date, they are willing and able to pay any subsequent rent due and have taken good care of the property and gotten along with most of their neighbours, which they will continue to do until they move.

While I have considered the above noted arguments from the Tenant regarding their need for additional time to find suitable housing, I also find the nature of the threats uttered by the Tenant against their neighbour very serious. As a result, I do not find a lengthy extension to the effective date of the Order of Possession appropriate. Given that March 31, 2021, is less than one month away, and given the arguments made by the Tenant, I find March 31, 2021, to be an appropriate end date for the tenancy, as I am satisfied that this date balances the Tenant's need for additional time and the Landlords' need to end the tenancy expediently in order to protect their other tenant's safety and right to quiet enjoyment. Pursuant to sections 55(3) and 68(2)(a), I therefore grant the Landlord an Order of Possession effective at 1:00 P.M. on March 31, 2021.

Conclusion

The Tenant's Application seeking an order for the Landlord to comply with the Act, regulations or tenancy agreement, is dismissed with leave to reapply.

The Tenant's Application seeking cancellation of the First and Second Notice is dismissed without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective at **1:00 P.M. on March 31, 2021**. The Landlords are 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 Landlords.

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: March 8, 2021

Residential Tenancy Branch