Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNC

Introduction

The tenant disputes a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act").

The tenant, the tenant's legal advocate, the tenant's support worker, and two agents for the landlord, attended the hearing on May 18, 2021.

Preliminary Issue: Service of Landlord's Evidence

The tenant's advocate confirmed that they had served their evidence on the landlord. The landlord's agents (hereafter the "landlord") testified that they served their evidence on the tenant by Canada Post registered mail. The tenant and her advocate denied receiving any evidence.

Submitted into evidence by the landlord is a photograph of the outside of an envelope addressed to the tenant along with her address. Affixed to the envelope is a registered mail label with the tracking number. Also submitted by the landlord is a copy of a printout from Canada Post's tracking website, the printout showing the history of the mail delivery. In addition, I entered the tracking number at the Canada Post - Track a package by tracking number website. The website indicates that the package was accepted at the post office on April 22, 2021. This date corresponds with the date on the registered mail label. The website indicates that on April 26, 2021 a Notice card was left at the tenant's address, indicating where and when to retrieve the mail. On May 3, 2021 Canada Post left a Final Notice, which indicated that the mail would be returned to the sender if the mail was not collected within ten days.

Sections 88 and 89 of the Act permit service of a document by registered mail. This includes service of evidence. Section 90 of the Act states that a document served in accordance with sections 88 or 89, if given or served by mail (including by registered mail), is deemed to be received on the fifth day after it is mail.

In this case, I find that the landlord served evidence on the tenant in compliance with the Act. Further, I find that the evidence was deemed to be received by the tenant on April 27, 2021 pursuant to section 90 of the Act.

As per *Residential Tenancy Policy Guideline 12. Service Provisions,* at page 13:

> Where a document is served by Registered Mail [. . .] the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail [. . .] is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

In this case, through either neglect or deliberate choice, the tenant refused to accept the Notice card and the Final Notice card. The deeming provision will therefore apply. A party to a dispute resolution party cannot avoid accepting evidence, or any other document for that matter, and then hope that the evidence will not be accepted and considered by a decision maker.

Given the above, I find that the landlord served their evidence in compliance with the Act and the *Rules of Procedure,* and, therefore, the evidence submitted by the landlord in support of its case will be accepted and considered.

If the tenant, or their legal advocate, disagrees with my finding in respect of the service and acceptance of the landlord's evidence, they may make an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Issue

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on August 5, 2008. Rent is $872.00. The tenant paid a security deposit of $360.00. There is a copy of a written tenancy agreement in evidence.

The landlord served the Notice to the tenant on February 5, 2021. Service was made by the Notice being posted on the door. A copy of the Notice is in evidence.

The landlord testified that the reason for the Notice being given was because of an ongoing issue (ongoing since 2018, it appears) arising from the tenant's negligence. Specifically, running an excessive quantity of water such that the rental unit – and the rental unit located a floor below – becomes flooded. The water damage to the rental unit and adjacent property has been extensive as a result of these floods.

A great deal of money has been spent by the landlord in dealing with the flooding. What is more, however, is the "horrendous smell" from sewage. Other occupants of the building have reported these issues. Copies of those email complaints were in evidence. Both of the landlords' agents have, in fact, attended to the rental and have smelled the horrendous smell themselves.

Technicians on a few occasions have attended to the rental unit and have noted that the property is in such a state of disrepair that at least one of them refused to enter. The technicians, whose reports are in evidence, found that there were no plumbing issues.

In respect of causation, the landlord argued that there is "no issue that these problems [have been] caused by the tenant."

The landlord sympathises with the tenant's health and financial difficulties. Yet, they have reached a point where the tenant has now caused three floods. Tens of thousands of dollars have been spent, and several thousand dollars more will likely be spent, on dealing with the flooding and ensuing property damage. Further, the landlord risks losing tenants who have reached their wit's end. The landlord is also, they noted, at risk of becoming embroiled in further disputes before the Residential Tenancy Branch by other current and former tenants for issues arising from the flooding.

As of yesterday (May 17, 2021), the landlord testified that the rental unit again flooded. The rental unit below the tenant's rental unit is now flooded for the third time. The landlord is bringing in the required technicians to deal with the damage.

As an aside, while the landlord drew my attention to a specific clause in the tenancy agreement regarding the tenant's obligations to repair and maintain the rental unit, the Notice did not include the ground of an alleged breach of a material term of the tenancy agreement. Thus, I will not address this specific point further.

The tenant testified under direct examination from her legal advocate, stating that “I think everything is fine with the apartment.” The tenant testified that she was not aware of any sewage problems, and, that she keeps her rental unit “tidy and neat.” At this point in her testimony, the tenant spent some time referring to a renovation to the property that the landlord had allegedly promised to do for her. No renovations were forthcoming.

In respect of the flooding, the tenant remarked that “there might be a pipe in the building that’s broken” and that there have been issues with the toilet. There has been “no issue with the toilet until the new landlord” took over. The remainder of the tenant’s testimony was about a stain on the floor, denials of water running, and a general position that the rental unit was kept clean, neat, and tidy. Photographs of a clean and tidy apartment were submitted into evidence by the tenant. Several letters of support for the tenant were submitted into evidence.

In closing, the landlord noted that no promise of renovations was made to the tenant, and, if the rental unit is clean and tidy, then, why is there yet another leak and flood?

In closing, the tenant’s advocate stated that she is unable to determine the veracity of the technicians’ reports and noted that there is no testimony or evidence that the flood is, or was, in fact, coming from the tenant’s rental unit. Briefly, the landlord responded by saying that there were two independent technician’s reports (which, as noted above, I have found to be properly served and are in evidence) which corroborated the landlord’s claim that the flooding originated in the tenant’s rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which that Notice is based.

In this dispute, the Notice was issued under section 47 of the Act. Specifically, subsections 47(1)(d)(i) through (iii), inclusive, and, under subsection 47(1)(f). The landlord’s claim, which is supported by the agent’s oral evidence, documentary and photograph evidence, persuades me to find that the tenant has, through either negligence or wilful disregard for the property, put the landlord's property at significant risk (section 47(1)(d)(iii) of the Act).

That the tenant has managed to flood her rental unit, and the rental unit below hers, not once but three times (including on the day before the hearing) is, I find, an action which has put the landlord's property at significant risk.

As noted on the technician's report dated May 10, 2020, there was a "Strong odor coming from unit [rental unit number]" and the "Unit had sewage all over floor due to tenant caused back-up." On the technician's report dated January 28, 2021 the tech arrived onsite and noted "strong sewage odor coming from [rental unit]." The report then states that "When tech entered unit, the floor was covered with sewage water. Tech could not find any plumbing issue and was caused by water left on the floor by the tenant." Further, the report noted that a remediation company would be required to fix or repair the problems. When considered in totality, this evidence leads me to find, and agree with the landlord's argument, that the tenant caused the flooding.

Contrary to the tenant's argument that there must be some other pipe in the building that is broken, the photographs, the landlords' agents' first-hand account, and the technicians' reports suggest otherwise. Further, while there may be issues with the toilet, I am not persuaded that this caused the flooding. No plumbing issues were found.

In respect of whether the risk to the property is "significant," I find that it was, and remains, at risk. A restoration company's estimate that is in evidence provides that building repair costs are over $3,900. A second estimate for emergency repair services estimates additional costs of about $2,600. (Though, there may be some overlap between the services provided.)

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground for ending the tenancy pursuant to section 47(1)(d)(iii) of the Act.

For the same reasons, I would likewise find that they have met the onus of proving that the tenancy ought to end pursuant to section 47(1)(f) of the Act, because "the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property." The evidence supports a finding that the tenant's repeated flooding has caused extraordinary damage to both the rental unit and the residential property.

Given these findings, I need not address the remaining grounds on which the Notice was issued.

As the landlord has met the onus of proving two grounds on which they issued the Notice, I dismiss the tenant's application for an order cancelling the Notice. The Notice, signed and dated February 5, 2021, is hereby upheld.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and, be in the approved form. Having reviewed the Notice, I find that it complies with section 52.

Next, section 55(1) of the Act states that if a tenant disputes a notice to end tenancy and their application is dismissed, or the landlord's notice is upheld, then the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

The landlord is thus granted an order of possession. This order of possession, which is issued in conjunction with this decision to the landlord, must be served on the tenant.

On a final note, however, it is not at all lost on me that the tenant leads a difficult life with limited support and limited income. I appreciate that photographs of a neat and tidy apartment were submitted as evidence of the tenant's recent efforts at maintaining a clean, neat, and tidy home, shortly after her discharge from hospital. She tries her best. The tenant presented as a demure, likeable, and polite individual. That her support worker attended the hearing, and that several letters of support were provided, bode well to some semblance of support. Hopefully, this support can continue.

However, the tenant's negligence has, quite sadly, led to the circumstance of ever-increasing property damage and nuisance to other tenants of the property. It is my hope that the tenant's support workers will, given the outcome of this dispute, now make wholehearted efforts at providing the support and assistance that the tenant deserves.

I have spent significant time considering the parties' submissions regarding when the tenancy ought to end. The tenant's advocate requested that the tenant be given until the end of June 2021, while the landlord seeks an end of tenancy as soon as possible.

Upon carefully considering the submissions of the parties and seeking to balance the respective parties' needs as expressed in those submissions, I order that the tenancy shall end on May 31, 2021 at 1 PM.

Conclusion

I HEREBY:

1. dismiss the tenant's application, without leave to reapply;

2. order that the tenancy shall end on May 31, 2021 at 1 PM; and,

3. grant the landlord an order of possession, which must be served on the tenant, and, which is effective on May 31, 2021 at 1 PM. If deemed necessary, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 19, 2021

Residential Tenancy Branch