Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNC, OLC, LRE**

Introduction

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

- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The tenant did not attend this hearing which lasted approximately 50 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant was represented by their counsel who confirmed that they were authorized to make submissions on the tenant's behalf. The landlord was represented by their agents. Agent LF primarily spoke on behalf of the landlord (the "landlord"). Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were represented service was confirmed. The parties each testified confirming receipt of the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?
Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Should the landlord's right to enter the rental unit be restricted?
Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant has been residing in the rental unit since 2018. Prior to that date the tenant was in other buildings managed by the landlord over the previous 9 years. The rental unit is a suite in a multi-unit supportive housing building.

As part of the tenancy agreement tenants are subject to wellness checks when they are not observed for an extended period of time by the staff of the building. These wellness checks take the form of the landlord and agents of the building management going to the tenant's suite and requesting they respond to verify that they are alright. If the landlord and agents do not hear an affirmative response to verbal questions they enter the rental unit to perform a visual check on the tenant's wellbeing.

On January 31, 2021 in the course of performing a wellness check, agents of the landlord were entering the tenant's rental suite when the tenant slammed the door on an agent hitting their head on the door and doorframe. The agent of the landlord suffered some injuries due to the impact and authorities were called to attend at the scene. The landlord submits that this is not an isolated incident but part of a pattern of response by the tenant to the periodic wellness checks.

The landlord issued a 1 Month Notice dated February 1, 2021 indicating the reasons for the tenancy to end:

Tenant or a person permitted on the property by the tenant has:

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

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 or the landlord;*

Counsel for the tenant provided lengthy and comprehensive submissions regarding the lack of statutory authority for a landlord to conduct wellness checks, whether such checks are appropriate for the tenant and that the landlord was entering the rental unit without proper notice pursuant to the Act. Counsel did not dispute that the tenant had shut the door on the landlord's agent.

Analysis

Section 47 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

In the present circumstance I find that the landlord has provided sufficient evidence to demonstrate that the tenant has seriously jeopardized the health, safety and lawful right of the landlord and their agents. The parties agree that there was an incident where the tenant slammed the rental unit door on the landlord's agent, hitting their head. I find that slamming a door on an individual to hit them when they are entering to be an inherently violent act that seriously jeopardizes health and safety. I accept the evidence that the incident of January 31, 2021 is not an isolated incident but part of a pattern of behaviour recorded in the incident reports and logs of the landlord.

I make no determination on the merits of counsel's submissions regarding whether wellness checks are appropriate or allowable under the Act. Even if I were to accept counsel's argument against wellness checks I do not find the tenant's response to be proportional, reasonable or justified.
I find that slamming a door on a person to be a wholly disproportional response and one that is likely to cause serious bodily harm. If the tenant did not consent to the landlord's agents entering the rental unit they could have simply verbally confirmed that they are

present when the agents first knocked on the door. When the agents opened the door the tenant could have informed them that they are not authorized to enter and asked them to leave. The tenant did not do this but instead positioning themselves behind the door and slammed it shut when there was a person in the doorway. I find that slamming a door on a person is an act that seriously jeopardizes health and safety and is reasonable basis for a tenancy to end.

I find that the landlord has sufficiently shown on a balance of probabilities that the tenant has engaged in actions that have jeopardized the health and safety of others. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
>
> > *(a) the landlord makes an oral request for an order of possession, and*
> >
> > *(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

I find it unnecessary to make a finding regarding the portions of the tenant's application pertaining to an ongoing tenancy.

Recovery of the filing fees is an award granted to a successful applicant, as the tenant was not successful in their application I decline to grant an order allowing for recovery.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises 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: May 13, 2021

Residential Tenancy Branch