Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNC

Introduction

The tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47 of the *Residential Tenancy Act* ("Act").

Both parties, including the tenant's legal advocate, attended the hearing on May 27, 2021. No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

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 issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began sometime in 2015 and monthly rent, which is due on the first day of the month, is $925.00. The tenant and his advocate did not dispute these facts regarding the tenancy or the rent. The rental unit consists of a basement suite in a residential home occupied (on the floor above the tenant) by the landlord. No written tenancy agreement was submitted into evidence by either party.

On February 14, 2021, the landlord served the Notice – a copy of which was in evidence – on the tenant. It should be noted that the tenant's name in the Notice was incorrect, and that the Notice was served on the tenant's friend. In any event, the tenant received the Notice and filed an application for dispute resolution on February 19, 2021.

While the Notice had six grounds for ending the tenancy checked off on page two, the landlord testified that the main issue had to do with an event on February 13, 2021. There is, or was, a mouse infestation in the rental unit and the landlord needed to do some repair work to cover a baseboard to keep the mice out. The tenant allegedly postponed the landlord's repeated efforts to enter the rental unit and do repairs.

Laundry use between the tenant and his neighbour also appeared to be lesser issue. There appeared to be some confusion between the tenant and the neighbour about when they could use the laundry. This confusion lead to some sort of verbal altercation between the parties and then the landlord tried to resolve the issue, only to be called an asshole. According to the landlord, he has been taking lots of verbal abuse from the tenant in the past.

Another ground for issuing the Notice is that the tenant has been repeatedly late paying rent. Text messages, between the parties, submitted into evidence reflect this (and were referred to by the landlord during his testimony). Relevant excerpts from these text conversations are as follows:

> March 1, 2020, 4:23 PM
> Landlord: Anyone home to drop March rent?
> Tenant: I can get it from you tomorrow around 11 am. Will you be home at that time?
>
> September 2, 2020, 6:58 PM
> Tenant: I'm at the front door with Sept Rent
>
> January 4, 2021, 1:32 PM
> Tenant: Hi, going to bank 3pm for rent [thumbs up emoji]

Next, there is the ground regarding subletting of the rental unit: the landlord claims that there is a female who has been living with the tenant in the rental unit for over a year. And, without the landlord's permission.

Also, there appears to be an issue with the tenant – who is a DJ – playing music at high volume in the early morning hours. He has also been smoking marijuana even though smoking is not allowed. The landlord concluded his testimony by speaking to the repairs needing done, about the next-door tenant being disturbed by noise, and, most importantly, the landlord stated that "I don't want to take his abuse anymore."

The tenant's advocate provided oral submissions, which the tenant acknowledged and confirmed were truthful and accurate representations of the facts as he saw them. The advocate submitted that the tenant has rarely ever been late and has always been cooperative with the landlord in paying the rent. Even, he added, after the landlord increased the rent in breach of the Act.

The tenant denied being abusive toward the landlord but noted that he had gotten upset on a few occasions. He has otherwise been "nothing but cooperative with the landlord." Next, the advocate spoke about the notice and entry issues, and that the tenant in fact helped the landlord work on repairs over a period of four days. He was "getting the tenant to help him do renovations." As for the smoking, the tenant and his wife did smoke outside the property when the tenancy began. Finally, as for the music disturbances, this happened once or twice, and not since 2018.

The advocate added that there have been no written warnings to the tenant about any of these issues before the Notice was issued. The tenant has apparently complied with the landlord's requests regarding music and has thrown no parties since 2018.

In rebuttal, the landlord testified that the tenant did not, in fact, help with renovations. "He did maybe five minutes of painting, then took off," he remarked. The music issues have not stopped since 2018, and that the tenant's version of events is "a total lie."

In their rebuttal, the tenant's advocate argued that there is no evidence that the property damage was caused by the tenant (the landlord disputed this on further rebuttal).

Analysis

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, such as is the case before me, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

It is important to note that 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.

I turn first to the first ground on which the Notice was given, namely, repeated late payment of rent. Section 47(1) and (b) of the Act states that

> A landlord may end a tenancy by giving notice to end the tenancy if [. . .] the tenant is repeatedly late paying rent

Three late payments are the minimum number sufficient to justify a notice under the Act (see *Residential Tenancy Policy Guideline 38*, page 1). Further, the guideline states that

> It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late [.]

In this dispute, the landlord testified, and provided documentary evidence in the form of screenshots from three text messages dated March 1, 2020, September 2, 2020, and January 4, 2021 to support his claim, that the tenant has been repeatedly late paying rent. The tenant's own statements within those three texts confirm and essentially acknowledge that he could not and did not pay the rent on the first of the month, as required by the tenancy agreement. All three late payments occurred in a span of less than eleven months. They are, I find, not far enough apart that in the circumstances cannot be said to be repeatedly late.

It is my finding, therefore, that taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, the landlord has proven the ground of issuing the Notice based on that of the tenant's repeatedly late paying rent. The Notice is upheld on this ground. Having upheld the Notice on this ground I need not consider the remaining grounds on which it was given.

Section 55(1) of the Acts states that

> If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
>
> > (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
> >
> > (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act reads as follows:

> In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> (e) when given by a landlord, be in the approved form.

While the Notice included a typographical error of the tenant's last name, I do not find that a mere error of this nature invalidates the notice. To cite a passage from *Davies v. Elsby Brothers, Ltd.,* [1960] 3 All E.R. 672 (C.A.), at page 676:

> In English law as a general principle the question is not what the writer of the document intended or meant, but what a reasonable man reading the document would understand it to mean; and that is the test which ought to be applied as a general rule in cases of mis-nomer-which may embrace a number of other situations apart from misnomer on a writ, for example mistake as to identity in the making of a contract. The test must be: How would a reasonable person receiving the document take it? If, in all the circumstances of the case and looking at the document as a whole, he would say to himself : "Of course it must mean me, but they have got my name wrong", then there is a case of mere misnomer.

In this dispute, taking the circumstances into account, there is no question in my mind that the tenant knew that the Notice was intended for him.

Second, the tenant's application also raises the issue of whether the Notice was correctly served. Section 89(1) of the Act lists the various acceptable methods of service, and references section 71 of the Act. Applying section 71(2)(c) of the Act, I find that while the Notice was not served in accordance with section 88 or 89, it was sufficiently given and served for the purposes of the Act. While the tenant did not initially receive the Notice, he was quickly in receipt of it and filed his application for dispute resolution shortly thereafter.

Having carefully reviewed the issues regarding the name misspelling, the service of the Notice, and the form and content of the Notice itself, it is my finding that the Notice complies with section 52 of the Act and that it was served in accordance with sections 89 and 71 of the Act.

Therefore, pursuant to section 55(1) of the Act, I uphold the landlord's Notice, dismiss the tenant's application for dispute resolution, and grant the landlord an order of possession. A copy of this order of possession is issued in conjunction with this decision, to the landlord. The landlord must serve the order of possession on the tenant in order for it to be effective.

Conclusion

I hereby dismiss the tenant's application.

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. If necessary, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

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

Dated: May 27, 2021

Residential Tenancy Branch