



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on March 25, 2021, wherein the Tenants requested an Order canceling a 1 Month Notice for Cause issued on March 18, 2021 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulations*, and/or the residential tenancy agreement and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on June 4, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. During the hearing, counsel for the Tenants raised an issue with respect to the introduction of a Report by the Landlord. I will address those concerns in more detail later in this my Decision.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure* (the "Rules"). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Rules*. *Rule 4.2* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenants named the property manager, B.S, as Landlord. A review of the tenancy agreement confirms the Landlord is a corporate entity. I therefore Amend the Tenants' Application to correctly name the Landlord.

Rule 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims. Hearings are also only scheduled for one hour.

I find that the priority claim before me is the validity of the Notice. Due to time constraints I was not able to consider the Tenants' claim for an Order that the Landlord comply with the *Act*, the *Regulations*, and/or the residential tenancy agreement. I therefore dismiss that portion of the Tenants' claim with leave to reapply.

Issues to be Decided

1. Are the Tenants entitled to an Order canceling the Notice?
2. Should the Tenants recover the filing fee?

Background and Evidence

Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord presented their evidence first.

The Landlord's property manager, B.S., testified as follows. She confirmed that she has worked in this capacity since August 2018. This tenancy began April 1, 2010; monthly rent is currently \$1,793.00; and the Tenants paid a \$722.50 security deposit and a \$700.00 pet damage deposit.

The Notice was served on the Tenants by registered mail on March 18, 2021. The reasons cited on the Notice were that the Tenants or a person permitted on the residential property by the Tenants 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.

The Landlord provided the following additional details on the Notice:

"The notice of eviction is served following the results of the harassment and bullying report from [name withheld] accepted by Worksafe BC under report [#withheld]. The Tenant has been found guilty of harassment and bullying."

B.S. stated that the reason the Landlord wishes to end the tenancy is that the Tenant, C.H., has harassed and bullied the building manager, B.C. since approximately May 2020, right after COVID-19 started, and initially related to B.C.'s decision to remove the Tenant from managing the music room. She further stated that C.H. and B.C. exchanged a number of emails in May in which each accused the other of bullying and harassment.

B.S. stated that the building manager then made a claim through WorksafeBC, who recommended a neutral investigator. The investigation started in November of 2020 and was finalized with a Report in March 2021. B.S. confirmed that upon receipt of the Report, the Landlord issued the Notice.

B.S. stated that there currently is no conflict between the building manager and the Tenant, and there hasn't been any issues since October 2020.

Notably, the Report was provided in confidence and included the following:

"This report (the "Report") is private and strictly confidential. It may not be photocopied or replicated in any manner or produced as evidence in any proceeding except as required by law.

The Report is subject to solicitor-client privilege and may not be discussed or disclosed to any external person or party, or with any person or party who is not entitled to receive or review a copy of this Report in the first instance.

Breaches of confidentiality regarding the Report may constitute a breach of confidentiality pursuant to [name withheld]'s policies and/or violation of applicable Provincial law.

If [name withheld] is required to disclose the Report or any portion of this Report to WorkSafeBC for the purposes of assessing a worker claim or a health and safety complaint, WorkSafeBC must undertake not to disclose the Report or any portion of it, to anyone, including the Complainant and the Respondents."

B.S. claimed she received oral permission to rely on this Report.

In response the Tenants' counsel submitted as follows.

Counsel for the Tenants raised concerns with respect to reliance on the report as it was provided in strict confidence. The Tenants' Counsel further noted that the writer of the report was not present during the hearing and therefore was not available for cross examination on the contents and findings contained in the Report. Finally, counsel noted that the report is anonymized, such that it wasn't even possible for the Tenants to fully respond. Counsel submitted that the report should be excluded and given no evidentiary weight in the hearing before me.

In response to the Landlord's testimony and submissions, the Tenant C.H. testified as follows. She confirmed that she and the building manager have had conflict for many years. She stated that she felt that she has been harassed and bullied as early as April 2017. She stated that she did not file an application before the Branch, but she did bring this to the Landlord's attention as early as 2017 when they had a meeting. She noted that this was before the current Property Manager, B.S. started working for the Landlord. Following this there were discussions about future meetings etc. but nothing was resolved.

C.H. stated that the most recent issues started when she was removed from the music room after her husband asked for upgrades to the suite and raised concerns with the building manager. She further stated that they did not receive a response from the Landlord to the complaints she brought forward.

C.H. confirmed that she was unaware of the workplace investigation until December 2020. She confirmed that she participated in the process although she disagreed with

the findings and believed the Report was very one-sided. She also stated that she does not believe that bringing their concerns to the Landlord about bullying and harassment constitutes bullying and harassment. The Tenant further stated that 16 other residents have brought forward complaints about the building manager. She confirmed there are 45 units, some of which have more than one person living in them. The Tenant stated that approximately 7 people have moved out as a result of the building managers behaviour, including their intended witness, E.S.

The Tenant confirmed that there has been no conflict with the building manager since October 2020. She also stated that since 2019 she has tried to disengage with contact with the building manager and has opted to have her partner, C.M., deal with the building manager.

Analysis

Ending a tenancy is a significant request and must be done in accordance with the *Act*. In this case the Landlord seeks to end the tenancy for cause pursuant to section 47() which reads as follows:

Landlord's notice: cause

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d)the tenant or a person permitted on the residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant...

The evidence confirms there has been conflict with the Tenant, C.H. and the building manager for many years. The Tenant says she is not the only resident who has had problems with the building manager and that many other residents have moved out as a result of their own conflict with the building manager. This testimony was not disputed by the Landlord's representative, although letters in support of the building manager were provided in evidence before me.

In the hearing before me, the Landlord attempted to rely on a Report commissioned by WorkSafeBC. This Report was provided in strict confidentiality. Although the Landlord's representative claimed to have oral permission to rely on the Report, she failed to provide any documentary evidence to support her testimony that such permission was provided.

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them and the right to receive and *meaningfully* respond to any evidence filed by the other party. In this case, the Report writer was not present for cross examination. The report was also anonymized such that the Tenants were not afforded a reasonable opportunity to respond to the information contained therein.

I agree with counsel for the Tenants that this report should be excluded as to permit the introduction of this Report would offend the Principles of Natural Justice and would deny the Tenants a fair hearing. I therefore give no weight to the Report contents or related findings.

Even if I am incorrect, and the Report should be considered, I find the Notice should be cancelled for the following reasons.

The evidence confirms that there has been no conflict since October 2020. The Tenant confirmed that since 2019 she has been reducing contact and consequently conflict with the building manager. While it may have been the case that the conflict in May of 2020 was such that this tenancy was not workable, more than a year has passed since that time. More importantly, the undisputed evidence is that there has been no conflict since October of 2020, some 8 months. The Notice was issued in March of 2021 some five months after there was any conflict with the Tenant and the property manager, and at a time when there was *no conflict and no issues* between the Tenant and the building manager. As such, I find the Landlord did not have cause to end this tenancy when the Notice was served.

On balance, I find the Landlord has failed to prove the reasons cited in the Notice. This tenancy shall continue until ended in accordance with the *Act*.

Conclusion

The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Act*.

Having been successful in their Application, the Tenants are entitled to recover the \$100.00 filing fee; to this end they may reduce their next month's rent by \$100.00.

The Tenants request for an Order that the Landlord comply with the *Act*, the *Residential Tenancy Branch Regulations*, and/or the tenancy agreement is dismissed with leave to reapply.

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: June 14, 2021

Residential Tenancy Branch