Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, RP, RR, LRE, PSF, CNC, AAT, OT, LAT, AS

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to allow the tenant or his guests to access the rental unit, pursuant to sections 30 and 70;
- an order for the return of the tenant's personal property, under section 65;
- an order of authorization to change the lock, pursuant to sections 31 and 70; and
- an order for the landlord to allow an assignment or sublet when permission was unreasonably denied, pursuant to section 65.

Tenant KM and witness AW, landlord JF and witnesses CC and JF attended the hearing. Landlord CDS was represented by agent SA (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

I note that section 55 of the Act requires that when a tenant submits an application for Dispute Resolution 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 the Act.

Preliminary Issue - Service

The landlords confirmed receipt of the tenant's application on March 03, 2021. Based on the landlord's undisputed testimony, I find the landlords were served with the application in accordance with sections 88 and 89 of the Act.

The tenant affirmed she served both landlords the evidence in a single package sent by registered mail on May 12, 2021 addressed to landlord JF. Landlord JF confirmed receipt of the evidence package on May 14, 2021. Landlord CDS stated she did not receive the evidence.

Section 89 of the Act states:

> (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
> (a)by leaving a copy with the person;
> (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].
>
> (2)An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:
> (a)by leaving a copy with the tenant;
> (b)by sending a copy by registered mail to the address at which the tenant resides;

> (c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
> (d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
> (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states:

> All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

Based on both parties' uncontested testimony, I find the landlords were not served the tenant's evidence in accordance with the Act, as both of them were served in a single package. As noted above, each respondent must receive the supporting evidence.

As such, I excluded the tenant's evidence.

The tenant confirmed receipt of the landlords' response evidence in person on May 14, 2021. Thus, I find the tenant was served with the landlords' response evidence in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Named Tenant

Tenant KM explained she is the only tenant and AW is a witness.

Section 64(3)(c) of the Act allows me to amend the application, which I have done to remove witness AW as an applicant.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states 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.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for

ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is dismissed, are the landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below. I explained rule 7.4 to the attending parties. It is the landlords' obligation to present the evidence to substantiate the notice to end tenancy.

Both parties agreed the tenancy started on September 01, 2020. Monthly rent is $425.00, due on the first day of the month. At the outset of the tenancy a security deposit of $425.00 was collected and the landlords hold it in trust.

Both parties agreed the Notice was served on February 09, 2021. The Notice is dated February 09, 2021 and the effective date is March 31, 2021. The application was submitted on February 17, 2021. The tenant continues to occupy the rental unit. The reasons to end the tenancy are: "The tenant significantly interfered or unreasonably disturbed another occupant or the landlord" and "Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order".

The details of events are:

> During the arbitration hearing it was agreed that:
> [tenant] would leave respectful messages, or put concerns in writing in our drop box. [tenant] has left several messages both for the landlord and [redacted] that are less than respectful, threatening (going so far as to contact contractors that work with [redated])and she is unreasonable disturbing the landlord, property managers and contractors.
> *notice for six weeks to vacate the property

Both parties agreed the landlord served a one month notice to end tenancy dated October 21, 2020. The tenant disputed the notice and the parties settled on January 19, 2021. The settlement to cancel the prior notice included the following conditions:

> […] the tenancy will continue in accordance with the Act, with the following conditions:
> a) The tenant or tenant's boyfriend will have no contact with the downstairs tenant by phone, text message, or in person.
> b) If the tenant needs to report an issue about repairs required to the rental unit the tenant may make the request in writing and drop it off in the mailbox of landlord's agent, or leave a respectful phone message.
> c) There will be no interference with any staff members or contractors coming to the rental unit to provide services or make any necessary repairs.
> d) The tenant agreed that she may lock the laundry room only when she is in the laundry room attending to her laundry. The tenant agreed that the door must remain unlocked at any other time in accordance with bylaw and safety requirements.

The landlord affirmed that between January 20 and February 08, 2021 the tenant continuously harassed landlord JF. On February 05, 2021 the tenant left 15 voicemail messages in the landlord's JF mailbox harassing him: "you are delusional, I am going to call you and bug you, I love it when you waste money on tradespeople – little way of getting revenge".

The tenant stated she told landlord JF he is delusional because of the evidence the landlord submitted to the prior arbitration hearing. The tenant can only contact the landlord by voicemail and the voicemail messages are limited to one minute, so the tenant left several messages.

The landlord submitted into evidence a voicemail message from the tenant saying: "Hi landlord, you are a pain in the ass, I don't care".

The landlord testified the tenant harassed the lower unit tenant in late January 2021 by saying: "you are fucking retarded, get out of here, get out of my house". The tenant denied she harassed the lower unit tenant and the only conversation she had with the lower unit tenant this year was on April 19.

The landlord affirmed the tenant contacted the rental unit's contractors between January 20 and February 09, 2021 and threatened to sue them because of prior statements they issued about the tenant. The tenant stated she only contacted the rental unit's contractors on January 29, 2021 and she was not abusive with them. The tenant told

the contractors she is going to sue them because of prior false statements issued by the contractors regarding the tenant.

Analysis

The tenant confirmed receipt of the Notice on February 09, 2021 and filed this application on February 17, 2021. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Based on both parties' uncontested testimony, I find the tenant sent the landlord 15 unrespectful voice messages on February 05, 2021.

Based on both parties' uncontested testimony, I find the tenant deliberately contacted the rental unit's contractors on January 29, 2021 to say she will sue them.

The tenant agreed in the January 19, 2021 dispute resolution settlement to be respectful with the landlord in order to cancel the October 21, 2020 notice to end tenancy for cause. The tenant sent the landlord 15 unrespectful voice messages two weeks after the prior hearing and deliberately contacted the rental unit's contractors ten days after the prior hearing. Thus, I find the tenant has been significantly interfering with the landlord.

Section 47(1) of the Act states:

> 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,
> […]
> (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
> (i) the date the tenant receives the order
> (ii) the date specified in the order for the tenant to comply with the order.

I therefore find the landlords are entitled to end this tenancy, pursuant to section 47(1)(d)(i) of the Act.

As the Notice is confirmed, I make no findings regarding the other reason cited by the landlords to end the tenancy.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form. I confirm the Notice and find the tenancy ended on March 31, 2021. I dismiss the tenant's application without leave to reapply.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that she may be liable for any costs the landlords incur to enforce the order of possession.

Conclusion

I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant an order of possession to the landlords effective two days after service of this order. Should the tenant 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: June 01, 2021

Residential Tenancy Branch