Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager ("**BS**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and BS confirmed, that she served the landlord with the notice of dispute resolution form and supporting evidence package. I find that the landlord was served with the required documents in accordance with the Act.

Preliminary Issue – Landlord's Evidence

The landlord provided the Residential Tenancy Branch (the "**RTB**"), and served the tenant, with documentary evidence in response to the tenant's application on July 13, 2021. This evidence included a copy of the tenancy agreement, photographs of the rental unit taken on July 13, 2021, and "letter of understanding" dated December 6, 2017 signed by the parties.

RTB Rule of Procedure 3.15 sets out the timeframe in which a respondent must serve its evidence:

> **3.15 Respondent's evidence provided in single package**
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> […]
>
> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch **not less than seven days before the hearing. See also Rules 3.7 and 3.10.**

BS testified that he was unaware of this rule.

Per Rule 6.6, the landlord bears the evidentiary burden to prove that the Notice was issued for valid reasons. As such, the by serving its documents two days before the hearing, the landlord has all but denied the tenant a meaningful opportunity to review them and prepare an adequate response.

Rule 3.17 sets out the basis on which evidence can be accepted after a deadline for submitting evidence has passed:

> **3.17 Consideration of new and relevant evidence**
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> Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is **new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.**
>
> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.
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> Both parties must have the opportunity to be heard on the question of accepting late evidence. If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence.
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> The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].
>
> [emphasis added]

The photographs submitted into evidence were not available at time the landlord was required to submit its evidence, as they were not created until July 13, 2021. However, there is nothing to suggest that they could not have been created prior to that date. Indeed, BS testified that he visited the rental unit on several occasions where it was in a similar condition to what he testified it was in on July 13, 2021. BS provided no evidence which suggested that the evidence submitted was not available to be submitted by the landlord's deadline. These documents were in existence at the time the landlord's evidence was due.

Accordingly, I find that the landlord does not meet the standard set out at Rule 3.17 for admitting new evidence. I exclude all of the documents submitted by the landlord from evidence.

BS was permitted to give oral testimony at the hearing.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the attendees, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting March 1, 2015. Monthly rent is $1161, which includes parking and use of a storage locker, and is payable on the first of each month. The tenant paid the landlord a security deposit of $495 which the landlord continues to hold in trust for the tenant.

BS testified that in January 2021 he was notified by the building manager of a smell in the lobby located on the first floor of the residential property. He testified that this smell emanated from the rental unit, which is located on the second floor of the residential property. He testified that, in early February 2021, he conducted an inspection of the rental unit to determine the cause of the smell. He testified that the condition of the rental unit was "at a level that was dangerous to be in".

BS testified that the bedroom floor was covered in food waste, soiled blankets, and debris, which made it possible to walk from the door to the bed without touching the carpet beneath. He testified that throughout the rental unit there was rotting food on the floor, and that the floor was moldy. The countertops and floor of the kitchen were covered in food debris and the refrigerator was full of rotten food and contained insects, flies, and larva. There was food packaging, such as pizza boxes, on the floor throughout the rental unit. The carpet was rotting. BS testified that due to a respiratory problem of the building manager, he advised the building manager not to go into the rental unit because of its advanced state of disrepair. He testified that, should tenancy be ended, he would organize for a "hazmat team" to fully remediate the unit.

BS testified that this was not the first time the tenant and the landlord had to address the sanitary conditions in which the tenant kept the rental unit. He testified that in late 2016 the landlord had served the tenant with a notice to end tenancy but had entered into a settlement agreement whereby the landlord agreed to withdraw the notice should the tenant meet certain conditions. A copy of this agreement was not entered into evidence, so I do not know the exact terms of the agreement, but I understand that one of these conditions what's that the rental unit was kept in in a sanitary state.

BS testified that following his first visit to the rental unit in early February he made three subsequent visits prior to issuing the Notice (which was issued on March 29, 2021). He testified that he returned to the rental unit in mid-February, mid-March, and on March 29, 2021 (following which he issued the Notice). The Notice set out the reasons for ending the tenancy as:

1) the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
2) the tenant put the landlord's property at significant risk; and
3) tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

BS testified that he scheduled these appointments with the tenant in advance, and in the instance of the mid-March inspection, moved the date of that inspection back by two weeks at the tenant's request. He testified that there was no change to the condition of the rental unit at any of these subsequent visits. He testified that on his first visit he noticed a piece of pizza on the ground in the hallway. This piece of pizza remained there when he visited the rental unit on March 29, 2021. BS testified that pizza remained on the floor on July 13, 2021, when he attended the rental unit to take photographs of it to submit as evidence for this hearing (which are excluded from evidence, as stated above).

BS testified that several occupants of the residential property have complained verbally to the building manager about the smell emanating from the rental unit, although none put their complaint in writing.

The tenant did not dispute BS's testimony regarding the condition of the rental unit. She acknowledged that she allowed it to deteriorate to a state that is "not acceptable". She testified that in early 2020, she was diagnosed with PTSD, and that this condition manifested itself via hoarding. She denied that the rental unit was in the condition it currently is since 2017. She testified that after the 2016 notice to end tenancy was rescinded, she cleaned the rental unit to a reasonably clean condition.

The tenant testified that at the start of 2020, the doctor assisting her in coping with her PTSD left his practice. She testified she could not secure a new doctor, that that it was difficult for her to obtain resources to deal with her disorder on her own, and she had trouble finding therapy groups to attend. She testified that she was able to start attending cognitive behavior therapy six months ago, and then she's working hard, but the progress is slow moving. She had arranged for PSTD-specific therapy starting in late-April 2021 and in May was able to meet with the "Hoarding Education and Action Team (HEAT)", a non-profit organization that assists people overcoming hoarding compulsions. She testified that, as she did not have a doctor referral, she was given lower priority for access to these resources. She did not provide any documentary evidence corroborating any part of this testimony.

The tenant testified that she has only recently got to a point where she is able to start working on a plan to address the condition of the rental unit. She testified that she works in a hospital and has had “zero time off” for the past year, but has scheduled two weeks off, starting July 22, 2021 to start cleaning the rental unit. She testifies that she has scheduled junk removal company to attend the rental unit on July 30, 2021.

She denied receiving adequate notice from the landlord prior to some of the inspections. She testified that the landlord posted notices of entry on the door of the rental unit one day before the inspection was to take place. She testified that she would not see these notices until after she got home from work and felt so hopeless about the prospect of cleaning the rental unit in a single night that she did not take any steps to clean it. She testified that she felt similarly after receiving the Notice to end tenancy. She did concede that on at least one occasion (she did not specify which) the landlord provided adequate notice prior to an inspection. She did not testify why she did not clean any part of the rental unit prior to that visit.

BS disputed the tenant’s assertion that the landlord posted the notices of entry on the door of the rental unit the day prior to an inspection. Rather, he testified that the building manager would post them on a Friday, and the inspection would take place the following Monday.

Analysis

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
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> 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.
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> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

As such, despite this being the tenant’s application, the landlord bears the onus to prove that the Notice was issued for valid reasons.

Section 47(1) of the Act states:

> **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
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
(iii) put the landlord's property at significant risk;
[…]
(h) the tenant
(i) has failed to comply with a material term, and
(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The Notice lists these reasons as the basis for ending the tenancy.

BS provided no testimony that a written notice to comply with a material term of the tenancy agreement was ever given to the tenant. I do not find that any written settlement agreement provided to her in 2017 amounts to such a written notice, as I accept the tenant's testimony that, following the making of the agreement, she cleaned the rental unit. I have no evidence (either oral or documentary) from the landlord as to the condition of the rental unit between 2017 and early 2020. As such, the landlord has failed to discharge its evidentiary burden to show that the tenancy may be ended pursuant to section 47(1)(h) of the Act.

However, I accept BS's undisputed testimony (which was confirmed by the tenant) as to the condition of the rental unit between his first visit in late February 2021 and his final visit when the Notice was issued on March 29, 2021. I accept his testimony that there was rotting food throughout the rental unit, that the refrigerator was full of insects, that the bedroom floor was covered in packaging, food, and dirty laundry, and that the carpet was rotting. I find that the condition of the rental unit did not improve whatsoever during this time, despite the tenant having adequate notice of the inspections on at least one occasion.

I find that the condition the rental unit was in at the time the Notice was issued both put the landlord's property at significant risk and jeopardized the health of other occupants of the residential property. The presence of rotten food throughout the rental unit represents a serious risk to health of other occupants by encouraging mold growth and attracting insects which, once ensconced in the rental unit, may spread to other units. Additionally, the presence of clutter described by the landlord poses a fire hazard.

The tenant has an obligation under section 32 of the Act to "maintain reasonable health, cleanliness and sanitary standards throughout the rental unit". She has failed to meet this responsibility, or take any steps to meet it following the landlord first alerting her that the condition of the rental unit was a problem in February 2021.

I accept that, since the Notice was issued, the tenant has began receiving therapy to assist dealing with the underlying issues which may be contributing or causing her hoarding behaviour. This is laudable, and I acknowledge that this can be a difficult thing for a person to do without the assistance of a medical professional.

However, such conduct subsequent to being served with the Notice does not cause the Notice to become invalid. The rental unit remains in the same condition today as it did when the Notice was issued. The risks to the landlord's property and other occupants' health and safety remains the same. The tenant's breach of the Act has been continuous. It is unfair to the landlord and other occupants of the building for this amount of time to pass without any improvement to the condition of the rental unit, when then problem has been clearly identified to the tenant.

I have reviewed the Notice and find that it meets with the section 52 form and content requirements, except for the omission of the landlord's name and phone number from the Notice. However, I do not find this defect causes it to be invalid, as the tenant knew or reasonably ought to have known the missing information, given that she was in contact with representatives of the landlord regarding the issues set out on the Notice in the month leading up to the Notice being issued. I amend the Notice to include the missing information per section 68(1) of the Act.

Accordingly, I dismiss the tenant's application to cancel the Notice. It was issued for valid reasons, those reasons persist to the day of the hearings, and the Notice is in the correct form.

Per section 55(1) of the Act, as I have dismissed the tenant's application to cancel the Notice and it meets the section 52 requirements, I must issue an order of possession ending the tenancy. As the tenant has paid her July rent in full, I make the order effective July 31, 2021 at 1:00 pm.

Conclusion

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

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by July 31, 2021 at 1:00 pm.

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: July 16, 2021

Residential Tenancy Branch