



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKER JSR LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, RP, OLC, CNC, FFT

Introduction

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

- 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;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, the tenant, L.M. requested an adjournment because he has a Doctor's appointment that was set just 3 weeks prior for which he has been waiting to get for the last 7 months. The landlord's agents (the landlord) disputes this request arguing that it would be a hardship to the landlord as many families affected by the tenants' actions has been very disruptive. The landlord stated that some tenants have filed multiple complaints regarding the disturbances from the tenants. The landlord requested proof of the tenant's Doctors appointment. The tenant stated that a copy of the Doctor's appointment confirmation was provided to the landlord prior to the hearing. The

landlord disputes this stating only a message was received requesting an adjournment, but no evidence. The tenants were asked if they had provided any proof of confirmation of the Doctor's appointment to the Residential Tenancy Branch (RTB). The tenants stated that proof was given to the RTB, however a review of the RTB file does not show any evidence of confirmation of a Doctors appointment. The tenant stated that he contacted the RTB on June 25, 2021 to submit the request for an adjournment. A review of the RTB database called DMS, Communications tab does not show any contact with the tenant on June 25, 2021. The tenant also was advised that a contact was made by the tenant on July 5, 2021 where the tenant was provided information over the phone and via email on rescheduling the hearing and the Rules of Procedure 5.1, 5.2 and 7.8., as well as information on service and submissions of evidence. The tenant confirmed that he talked to someone on July 5, 2021 and provided his Doctor's confirmation at that time. A second review of the file did not reveal any evidence submission for a Doctor's appointment confirmation. A review of all 4 evidence files submitted by the tenants shows 3 files regarding Canada Post Receipt, A Canada Post Registered Mail Tracking label and a copy of a tenancy agreement. I find that this request for an adjournment by the tenant is denied as it is highly prejudicial to the landlord and the tenants have not provided any supporting evidence of a Doctor's appointment. Despite the tenants stating that a copy of the Doctors confirmation was provided, this was disputed by the landlord. I also find in the absence of any Doctor's confirmation of an appointment that a delay for the landlord in a dispute for a notice to end tenancy to be highly prejudicial to the landlord. On this basis, the tenants request for an adjournment is denied. The tenant, L.M. was advised that if he leaves the conference call hearing, the hearing shall proceed in his absence. The tenant advised that all of his evidence was on his computer and the co-tenant, E.K. was computer illiterate, but that she could continue. The tenant stated that he did not prepare for the hearing to go ahead in his absence. The tenant, L.M. stated that he was now leaving for his Doctor's appointment.

The tenant, E.K. (the tenants) stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail. The landlord's agents (the landlord) initially stated that the notice of hearing package was received.

Both parties confirmed the tenant served the landlord with their submitted 4 documentary evidence files via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenants with their 10 documentary evidence files late on July 10, 2021 posted to the rental unit door.

The landlord stated that their evidence was submitted late due to not receiving the entire notice of hearing package from the tenant. The landlord stated that only the notice of hearing letter was provided. Despite this the landlord stated that they were ready to proceed.

I accept the affirmed testimony of both parties and find that both parties are sufficiently served as per section 71 of the Act.

The tenants' application was clarified. Besides the tenants request to cancel the notice to end tenancy the tenants also applied for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

The tenant, E.K. confirmed in her testimony that these requests were unrelated to the notice to end tenancy dispute. Pursuant to Rules of Procedure 2.3 Unrelated issues, the tenants' requests may be severed at the discretion of the Arbitrator if they were found to be unrelated to the primary issue. As such, I order these unrelated issues to be dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods.

The hearing shall proceed on the tenants' request to cancel the 1 month notice and recovery of the filing fee if found successful.

At 71 minutes past the start of the scheduled hearing, the hearing was adjourned due to a lack of time. Both parties were notified that attached to the interim decision a notice of adjournment would be sent to each party to those confirmed mailing addresses of each party. Both parties were also cautioned that no new evidence was to be submitted nor would it be accepted.

On August 9, 2021 the hearing resumed with both parties present.

During the hearing the landlord repeatedly asked to submit new documentary evidence not previously submitted. Both parties were reminded of the Residential Tenancy Branch Rules of Procedure, Rule 3- Serving the application and submitting and exchanging evidence. Both parties were also reminded of the Arbitrator's caution from

previous hearing date and the interim decision cautioning both parties that no new evidence was to be submitted once the hearing commenced.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2020 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 3, 2020. The monthly rent is \$1,400.00 payable on the 1st day of each month. A security deposit of \$700.00 was paid on May 3, 2020.

On April 29, 2021, the landlord served the tenant with the 1 Month Notice dated April 29, 2021 in person. The 1 Month Notice sets out an effective end of tenancy date of May 31, 2021 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the 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.
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The details of cause states:

The tenant, L.M. repeatedly paid rent late. According to the lease agreement, M. should pay his rent on the 1st date of each month. However, in November 2020, the rent was paid on Nov. 6th; in December 2020, on Dec 7th; in January 2021, on Jan 12th; in February 2021, on Feb 11th; and in March 2021, on March 10th.

We have also received numerous complaints from other tenants, against, M. and E. who is living in the same unit at #102 with him. The latest complaints we have received are on the date of April 20, April 22, and April 27, 2021. The reason of the complaints including: repeatedly making unreasonable loud noises and violent arguments (yelling and screaming); dropping boxes and other garbage into the hallway and other common area; smoking inside of the building; using and trading illegal drugs in the property; vandalizing numerous other tenant's vehicle; violently attacking each other; and threatening other tenants. The police have been called by other tenants numerous times because of their behaviour such as violent argument or physical fighting. The latest time is on the date of April 20, 2021. There are few other times in April with the police file number of ...and ... Other tenants have claimed that they feel physically and mentally jeopardized, and considered it's unsafe to live in the building.

[reproduced as written]

The tenants dispute the landlord's claims.

The landlord stated that the tenant was repeatedly late paying rent for the months:

November 2020	Paid November 6
December 2020	Paid December 7
January 2021	Paid January 12
February 2021	Paid February 11
March 2021	Paid March 10

The tenants confirmed that he was late paying rent as claimed by the landlord, but that the tenant was only truly late paying rent for March 2021. The tenants argued that the landlord recently took over as owners in October 2020 and that rent was paid via cheque at that time. Both parties confirmed that rent began being paid via e-transfer to the landlord in November 2020. The landlord stated that the tenant was verbally informed to pay the rent to the landlord via e-transfer by the landlord, S.C. in November 2020. The landlord also stated that all tenants were provided with a written notice to pay the monthly rent via e-transfer. The tenants dispute this claim arguing that at no time has the tenant received a written notice from the landlord on the payment of rent. The tenants argued that they received a copy of the notice from another tenant of the building in January 2021. The landlord argued that all tenants were provided with the notice, but was unable to provide any supporting evidence of such.

The landlord stated that they have received numerous complaints from other tenants that these tenants are yelling, screaming, damaging property and threatening other tenants.

The tenants dispute these claims.

The landlord referred to an email from another tenant that there is loud tv noise and yelling and screaming coming from the tenants' rental unit. The landlord stated that at no time was any notice given to the tenants regarding the noise complaints or that continued action could result in the end of their tenancy.

The landlord also stated that the tenants are selling drugs out of the rental unit and have referred to an email dated April 20, 2021 from another tenant. It states in part,

...We have also been exposed to conversations about illegal drug use within their suite, I have also seen the woman who lives with the man in the suite come out front of the building to collect illegal drugs from a car that had pulled up to the building. I believe the person renting the suite is a narcotics dealer...

The tenants dispute these claims arguing that the landlord has provided no evidence of illegal drug sales.

The landlord stated that they know there is evidence submitted of the tenants selling drugs but is unable to locate it for the hearing.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, the landlord has claimed that the tenants have been repeatedly late paying rent for the months: November 2020, December 2020, January 2021, February 2021 and March 2021. The tenants have confirmed that they were late paying the rent for these months as claimed by the landlords. However, the tenants claimed that since the new landlord took over in October 2020 it has been a confusing process on who to pay the monthly rent to. The landlord has argued that all tenants were provided a written notice on how to pay the monthly rent via etransfer. The tenants have disputed that no such notice was received, however, confirmed that copy was obtained from another tenant in January 2021. The landlord was unable to provide any supporting evidence of

delivery of this notice. The landlord however argued that in November 2020 the tenants were verbally notified in person to pay the monthly rent via etransfer to the landlord, S.C. The landlord argued that this is shown in the tenants' repeated late rent payments for the above noted 5 months as each payment was made via etransfer to the landlord on the stated days. In this case, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant that written notice was given to the tenants on monthly rental payments. I also find that the landlord provided undisputed affirmed evidence that she verbally notified the tenants in person that monthly rent etransfer payments could be made directly to her. The landlord provided undisputed evidence that each of the 5 late rent payments were made directly to her email for etransfer rent payments on the above noted dates. On this basis, I find that the tenants were aware of how to pay and that monthly rent was due on the 1st day of each month. The landlord's notice to end tenancy dated April 29, 2021 is upheld. The tenants' application to cancel the 1 month notice is dismissed.

Pursuant to section 55 of the Act, the landlord's notice having been upheld is entitled to an order of possession to be effective 2 days after it is served upon the tenants as the effective end of tenancy date has now passed.

As an order of possession has been granted on the first reason for cause, I find it is unnecessary to render finding on the remaining reason for cause.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: August 9, 2021

Residential Tenancy Branch