Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE BLOOM GROUP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC-MT

Introduction

The tenant applied to dispute a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act"). In addition, they applied for more time to dispute the Notice, pursuant to section 66 of the Act.

The tenant and a representative (but not agent) for the landlord attended the hearing on September 16, 2021. The tenant was present with a third party who appeared to provide some sort of backup or support to the tenant, but that third party did not testify.

The landlord's representative (the "landlord" for brevity") testified that he served copies of the landlord's documentary evidence on the tenant by way of Canada Post registered mail. Confirming of service documentation was also submitted into evidence. In respect of the tenant's documentary evidence, his application, along with three support letters, were served on the landlord.

Preliminary Issue: Application for Extension of Time

The landlord's representative (hereafter the "landlord" for brevity) gave evidence that the Notice was served by leaving a copy in a mail slot at the address of the rental unit on April 26, 2021. This method of service is permitted under section 88(f) of the Act. The service was witnessed by another employee (S.H.) of the landlord, and a proof of service document was provided in evidence.

Section 90(d) of the Act states that a document given or served pursuant to section 88(f) of the Act is deemed to be received on the third day after it is left. Thus, the tenant is deemed to have received the Notice on April 29, 2021. There is no evidence before me to find that the Notice was received on either an earlier or a later date.

The Notice (a copy of which was in evidence) was issued under section 47 of the Act. Section 47(4) of the Act states that "a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice."

Where a tenant does not dispute a notice within ten days of the date the tenant receives, or is deemed to have received, the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice (which in this case was May 31, 2021) and they must vacate the rental unit by that date.

In this dispute, the tenant applied for more time to dispute the Notice. This aspect of the tenant's application was made under section 66(1) of the Act, which states that

> The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

Residential Tenancy Policy Guideline 36 sets out the policy on when an arbitrator may extend a time limit under the Act. It explains that the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. Moreover, the word "exceptional" implies that a reason for failing to do something at the time required is very strong and compelling. A party putting forward a case in which they seek an extension of time must provide persuasive evidence.

The tenant's application noted that he "had a period of suffering mental illness prior to filing. Got the dates confused. Have a letter from my clinic to verify that I was unable to complete application during that period. Letters will be submitted in the evidence from medical professionals" (see page 4 of Tenant's Application for Dispute Resolution Current Tenancy).

In support of this application, the tenant provided a photograph of a letter authored by a case worker (or some such medical professional) from Vancouver Coastal Health. The letter is dated May 10, 2021 and the professional writes as follows:

> Please accommodate this person in extending their deadline for eviction dispute. They have been suffering with mental health issues and were unable to attend your meeting last week.

While the author likely mistook the tenant's deadline for making an application with that of a hearing (the "meeting" referred to), I nonetheless find that this letter supports the tenant's claim that their mental health issues caused the confusion in respect of dates.

Given the above, I find that there were exceptional circumstances that justify an extension of the time in which the tenant had to dispute the Notice. Therefore, the tenant's application to dispute the Notice is granted.

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 in 2012 and the present landlord took over more recently. The landlord testified that there have been many complaints from other residents in the 220-unit 9-floor building about the tenant causing noise. Copies of those complaints were provided into evidence. The landlord referenced a total of ten complaints from five separate occupants.

The landlord also testified that he, along with another colleague, attended to the rental unit in April 2021 and found the rental unit to be in a condition that he described as having a major cockroach infestation and "stuff piled up." Several photographs of the interior of the rental unit were provided into evidence. The landlord commented that he was "pretty horrified" at what he observed.

There was also, the landlord testified, a smoke detector that had been covered up with a plastic bag and a propane tank sitting in the living room. The landlord also found a knife sitting next to a smoldering rag on a ledge outside the window. There was, the landlord argued, a risk of catastrophic damage to the property had the smoldering gotten worse.

While the tenant told the landlord that he was in the process of cleaning up the rental unit, nothing appeared to happen, and the landlord proceeded with issuing the Notice.

The tenant testified about never having any noise complaints until the present landlord took ownership. He explained that the rental unit is a one-bedroom unit, and that it is considered “a hot commodity.” The landlord has, he theorizes, “a long list of people wanting it.” According to the tenant, the landlord’s representative “is on an eviction kick.” He was hired by the landlord to increase profit margins and has undertook monthly mass evictions of tenants.

The tenant disputed the nature of the complaints and said that the complaints “are not accurate.” He acknowledged having received a warning letter in March of 2021, regarding three noise complaints, he disputed the allegations. And he mentioned that “I don’t get noisy to be honest.”

It was at this point that the tenant again began to describe the landlord’s representative as being “on an agenda” to get tenants out so that the rental units could be rented out for more money. “I’m in prime real estate,” he added. Finally, while he agreed that the rental unit was a bit of a mess (“a hoarder’s home,” he remarked) it was by no means damaged.

Last, the tenant explained that he has been in a state of severe depression over the summer months, that he is “not doing well, mentally,” that he has lost a partner, and that he has lost multiple friends.

Analysis

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. A “balance of probabilities” means that I find it more likely than not that the facts occurred as claimed.

The Notice was issued under subsections 47(d) and 47(f) of the Act.

I turn first to subsection 47(f) of the Act which states that a landlord may issue a notice to end tenancy when “the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property”.

In this dispute, while the rental unit is certainly unkempt, there is insufficient evidence before me to find that the tenant has caused extraordinary damage. While some damage may have happened, it cannot be found that the damage is extraordinary. Thus, on this basis I must dismiss that specific ground on which the Notice was issued.

Subsection 47(d) of the Act, which contain the other three grounds on which the Notice was given, state that a landlord may give a notice to end tenancy when

> 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, or
>
> (iii) put the landlord's property at significant risk;

In this dispute, the existence of a propane tank in the living room and the deliberate covering of a smoke detector by a plastic bag – proven by the undisputed testimony of the landlord's property manager and supported by photographs – are, I am more than persuaded, actions that seriously jeopardized the health and safety of all other occupants of the building. Such conduct is wholly unacceptable and cannot continue.

Last, while it is not lost on me that the tenant has experienced, and continues to experience, an incredibly difficult life full of loss and mental health issues, the health and safety of other occupants cannot be ignored. Further, I must place little weight on the tenant's argument that the landlord's representative is on some sort of "eviction kick" involving mass evictions driven by a plan to increase profit margins. Quite simply there is no evidence to support this rather absurd claim.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving a subsection 47(d)(ii) ground on which the Notice was given. Having therefore found that such a ground is proven I need not consider the remaining grounds.

Given the above, then, the tenant's application for an order cancelling the Notice is dismissed without leave to reapply. Accordingly, pursuant to section 55(1) of the Act, the landlord is granted an order of possession of the rental unit.

A copy of this order is issued in conjunction with this decision to the landlord, and the landlord is responsible for serving a copy of the order on the tenant.

Conclusion

The tenant's application is hereby dismissed, without leave to reapply.

The landlord is hereby granted an order of possession, which must be served on the tenant and which is effective two days from the date of service (taking into account any deeming period as set out in section 90 of the Act). 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 under section 9.1(1) of the Act.

Dated: September 16, 2021

Residential Tenancy Branch