Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Proline Management Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenant applied for dispute resolution on September 3, 2021 seeking an order to cancel the One-Month Notice to End Tenancy for Cause (the "One-Month Notice"). They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 17, 2022.

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Issues to be Decided

Is the Tenant entitled to an Order that the Landlord cancel or withdraw the One-Month Notice?

If unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to recover the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties submitted a copy of the tenancy agreement. This tenancy started on October 15, 2020, to finish at the end of the fixed term on October 31, 2022. The Tenant pays $2,800 rent per month. A specific clause in the agreement covers conduct, providing that "the tenant must not . . . annoy, interfere with or otherwise disturb the quiet enjoyment of another tenant, occupant, neighbour, or the landlord. . ."

The Landlord initiated a dispute resolution process in August 2021, making that application on an urgent basis where the Tenant posed "an immediate and severe risk to . . . other occupants or the landlord. . ." That hearing took place on August 20, 2021, with the Arbitrator dismissing the application on August 24, finding that the Landlord had not provided sufficient evidence of the urgent risk.

The Landlord issued the One-Month Notice on August 27, 2021 for the tenancy end date of September 30, 2021. The Landlord indicated the Tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord" and "seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

The details section on the One-Month Notice lists the Landlord's description of the events of July 9, 2021, where the Tenant "caused a major disturbance." This was the Tenant observed and heard "shouting explicit and racially charged language from [their] balcony where [they] stood naked and exposed to all residents." The strata received 4 bylaw complaints because of this behaviour.

Further, the Landlord set our how the Tenant "threatened the health and safety of another resident and [their] partner" on July 13. The statements involving racial epithets and the Tenant's own stated physical capability with martial arts were interpreted as a threat by another resident. The Landlord wrote that additional other residents witnessed this and provided statements.

The One-Month Notice also contains the detail that the strata implemented a ban from all amenities. The Tenant did not request a hearing from the council and continued to access the amenities thereby "causing stress and anxiety to the other residents."

The Landlord included copies of bylaw violation reports:

- On July 11 a resident reported the Tenant on July 9 and July 11 watched into their own unit with binoculars on three occasions, prompting their call to police. Other actions by the Tenant on the opposite-facing balcony in a state of undress made this resident "genuinely feel threatened."
- On July 13 the same resident reported that the Tenant on July 13 stated similar racial epithets. The resident called the police and "they took [the Tenant] away."
- A separate report from the same resident on July 13, reporting more detail on the July 13 incident provides detail on the Tenant making statements to the same resident, which that resident interpreted as a threat.
- A separate report from another resident for incidents on July 10, 11, and 13, noting "moving things around through early hours of the morning" and "Screaming outside using . . . racial sexual and threatening language."

On July 14 the agent for the strata advised that there was a fine levied against the rental unit because of the Tenant's actions on July 9, 11, and 13, 2021. After their $200 fine, the strata imposed a 60-day amenity ban against the unit, meaning the Tenant was not allowed to enter or use the recreational facility area.

A separate communication dated July 14, from another resident to the officers who attended on July 13, is in the Landlord's evidence. This describes the Tenant "ranting and screaming profanities from [their] deck." This included "threatening other tenants/owners, and using terms including threats of killing people" and using a racial epithet. Also, this resident's child observed the Tenant on a Monday afternoon on the balcony "screaming profanities."

The Landlord submitted evidence of the charge of criminal harassment, with an associated undertaking that the Tenant does not have any contact with one of the building residents. This was for an offence date shown as July 29, 2021.

The Landlord provided photos, one of which show the Tenant on their balcony in a state of undress. Two other photos show the Tenant in close proximity to other residents who had raised the earlier complaints as they ate at a local restaurant.

The Landlord also included a forwarded email from the Tenant dated July 12, 2021. The Landlord was copied on this message. The Tenant complained about the service they received from a taxi driver, referring to the driver's ethnicity. Additionally, the Tenant addressed one recipient of that message, stating "you are a fat ugly woman who

will never be happy." Additionally, for a scheduled taxi pick-up, they requested a "white man white woman."

The Tenant provided two written statements for this hearing. In response to the details of July 9 on the One-Month Notice, they "deny that this happened as described or not at all." They received the letter from the strata dated July 14 though had no opportunity to question the residents who made complaints, and the Tenant notes the strata "has never determined that the complaints were valid." The Tenant also takes issue with the statements of one resident, whose testimony as a witness in the August dispute resolution process was "so non-credible . . . that I didn't even testify that what [they] said were lies". They also submit the issue was previously dismissed by the Arbitrator, and "this issue has been determined by the branch."

In this statement the Tenant also submits that there was no finding by the strata that they violated a bylaw, and there were never any fines. They argue against the ban implemented by the strata, and also state their rent was always paid on time and "the rental unit is a clean and hygienic condition." They submitted sections of the *Strata Property Act* that set out enforcement options, fines, and the process for a party to answer complaints.

In their second statement dated December 24, they again raise their objections to the strata process, where they were not issued a fine, nor denied access to amenities. Aside from this, they note the Landlord is not a resident at the property and "has no firsthand knowledge of any of the allegations included in the [One-Month Notice]". Also, "the Landlord has no firsthand knowledge of the validity of any allegations made about me to the strata corporation regarding any breach of the bylaws by my conduct." They finish this statement with the submission that the Landlord should not end the tenancy on the basis of unsubstantiated complaints where the strata has not investigated the matter or provided the Tenant the opportunity to answer the complaint.

The Tenant questioned the process for bylaw complaints more generally in the hearing, submitting that the strata here was not complying with the *Strata Property Act*. The Landlord, in the Tenant's submission, should not be relying on the bylaw notices, particularly where there was no hearing process, which was actually requested by the Tenant. At the outset of the hearing the Tenant also noted their concern that the people who made strata complaints were not in attendance at the hearing, and there was no opportunity to challenge the allegations therein.

The Tenant gave their version of events leading up to July 13, where the other resident involved "took a hating to [the Tenant]". This was based on that resident ostensibly defending a custodial worker from the Tenant, within the recreational area. After the third night of receiving that resident's complaints and comments, the Tenant responded and yelled back to that other resident. The Tenant denied referring to race. This was when the police came and took the Tenant to a health facility. The Tenant acknowledged the police complaint and agreed not to go near the other resident involved in that piece.

Addressing the Landlord's photo evidence, the Tenant noted they were not in the state of undress as alleged. They were not following the other resident and their companion as allegedly captured in two other photos.

In the hearing the Tenant had the opportunity to question the Landlord directly on the situation. They submitted that the police warned the other resident against making "spurious allegations", and that anyone can file a criminal harassment complaint against another. In line with the Tenant's submission that no witness for the Landlord appeared to verify the written complaints, they questioned how many units would have actually heard any statements from the Tenant; the Landlord answered "many" which the Tenant submitted was not the number of individuals presented here, based on the written statements. The Landlord reiterated their point that 4 witnesses say the Tenant used the language as recorded, and "a lot of people were privy to this information."

Analysis

The *Act* s. 47(1) contains the following provisions:

> (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 lawful right of another occupant or the landlord

Following this, s. 47(4) of the *Act* states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

When a landlord issues a One-Month Notice and the tenant files an application to dispute the matter, that landlord bears the burden of proving they have grounds to end

the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

I find the Landlord has met the burden of proof to show that the Tenant has interfered with and unreasonably disturbed other occupants and the Landlord of the property.

Other residents in the building complex raised concerns through channels other than the Landlord directly. For some, this was via the strata in their complaints process, for at least one other, this was with the police.

The Tenant takes issue with the resident complainant here in that they allege this other resident was the source of difficulty for them. This was the resident that "took a hating to [the Tenant]" and was not available to provide direct testimony in the hearing. I draw no adverse inference from that resident not attending. The evidence of that resident's three complaints to the strata is not direct-sourced material addressed to the Landlord; however, it is still relevant to one of the reasons the Landlord issued the One-Month Notice. I find the complaints stand as information provided to the Landlord, via the strata, relevant to a demonstrable reason a landlord may end a tenancy.

As it stands, I find the weight of this evidence is not affected negatively by the strata process, which either played itself out fairly, or remained undetermined. Independent of the way the strata makes determinations on a person's complicity in bylaw violations, I find the complaints provided by the Landlord here are relevant evidence on a building resident raising their concerns about the Tenant's conduct.

Were this the sole evidence provided by the Landlord, this information may prove to challenge the credibility of the individual resident involved where there was no closure by the strata; however, there are other accounts in the Landlord's evidence. One of them is a separate resident complaint to the strata. I find this confirms negative and inappropriate conduct attributed to the Tenant. There is no evidence of collusion between the two residents; therefore, there is nothing to detract from the veracity of this second resident's account.

Aside from strata complaints, there are two records that show other residents' need for police involvement. A separate resident called to police to report the conduct of the Tenant. This resulted in the Tenant being detained. Of concern to this resident was their own child's observation of the Tenant – at a time separate from those noted in complaints to the strata – "on Monday afternoon out on his deck screaming profanities."

The building that contains the rental unit is one of two large structures where many units face each other. I find the rental unit in question, currently occupied by the Tenant, is

plainly visible to many other residents. One resident described the “Christmas lights and fire pit burning through the evenings through to morning”; I find it more likely than not the Tenant’s own unit is visible to many other building residents from the adjacent structure. Though the Tenant denied being fully undressed, the photo provided by the Landlord shows a state of undress that is inappropriate, and judging from the level of detail captured, plainly visible to many other residents. I conclude from these points that the locale and openness of the rental unit is making the Tenant’s problematic conduct plainly visible and audible to many building residents. The substance of the complaints involving conduct is what the Landlord presented as evidence here, though a reasonable implication is the building design is making the disturbances particularly pronounced.

I focus on one final piece of the Landlord’s evidence. This is the Tenant copying the Landlord as a respondent, forwarding a message from a local taxi company to them from two years prior. I find it represents both a disturbance to the Landlord where they were copied on the Tenant’s separate conflict and stands as evidence of the coarse manner in which the Tenant responds to others. I find it reasonable for the Landlord to include this piece as evidence for this hearing: I find it is a legitimate concern from the Landlord’s perspective on the Tenant’s conduct.

In sum, I find the Landlord’s stated point that separate residents complained about the Tenant’s conduct is validated. The Tenant questioned the credibility of the one resident because their credibility in a prior hearing was found by the Arbitrator to be lacking. Respectfully, I find the basis of that Arbitrator’s decision was based on a review of the Landlord’s request to end the tenancy on an *urgent* basis, in light of the evidence presented concerning the possible immediate and severe risk to other occupants. The Tenant here challenged the strata process and the fines and bans imposed; I find this has no import in this hearing, forming no basis for the Landlord ending the tenancy. It is the Landlord who chooses to end the tenancy here and pursued this process through the legal means available to them.

For the reasons above, the Tenant’s application to cancel the One-Month Notice is dismissed.

The *Act* s. 55(1) states that if a Tenant applies to dispute the Landlord’s notice to end tenancy and their Application is dismissed, the Landlord must be granted an order of possession if the document complies with all the requirements of s. 52 of the *Act*. On my review, the One-Month Notice here contains all the required elements set out in s. 52.

By this provision, the Landlord is entitled to an Order of Possession and the tenancy shall end. The tenant's Application here is dismissed without leave to reapply.

Because they were not successful in their Application, the Tenant is not entitled to reimbursement of the filing fee.

Conclusion

I grant an Order of Possession to the Landlord **effective two days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia, where it will be 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 s. 9.1(1) of the *Act*.

Dated: January 24, 2022

Residential Tenancy Branch