



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, LAT, LRE, CNOP, FFT**

Introduction

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

- cancellation of a One Month Notice dated August 8, 2021 ("1 Month Notice");
- an order of possession of the rental unit pursuant to section 54;
- an order requiring the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72(1).

The original hearing of this application was held on December 8, 2021. As there was insufficient time to complete the hearing, the parties consented to an adjournment of the hearing. I issued an Interim Decision dated December 8, 2021. The Interim Decision and Notices of Dispute Resolution Proceeding for this adjourned hearing were emailed to the parties by the Residential Tenancy Branch ("RTB").

The Landlord's property manager ("RR"), Landlord's legal counsel ("RH") and the Tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant testified he served the Landlord with the Notice of Dispute Resolution Proceeding for the original hearing held on August 12, 2021 ("NDRP") in-person but he could not recall the date on which he served it on the Landlord. RH acknowledged the

Landlord received the NDRP. I find the Landlord was served with the NODR Package in accordance with section 88 and 89 of the Act.

The Tenant testified he served an amendment (“Amendment”) to his application to dispute the 1 Month Notice by serving the Amendment in-person on the Landlord on or about August 6, 2021. However, the date of the 1 Month Notice was dated August 8, 2021, being 2 days after the date the Tenant filed his Amendment with the RTB. The Landlord was unable to explain this discrepancy. RH acknowledged the Landlord received the NDRP and advised the Landlord wished to proceed with the hearing. I find that the Landlord was sufficiently served with the Amendment pursuant to section 72(2)(b) of the Act.

The Tenant testified he served additional evidence for this application on the Landlord on a USB stick in-person on or about November 12, 2021. RH acknowledged that the Landlord received the Tenant’s evidence and requested that the hearing proceed. I find that the Landlord was served with the Tenant’s additional evidence pursuant to section 88 of the Act.

RH stated the Landlord had served evidence on the Tenant for this proceeding by email on November 18, 2021. RH stated service of the Landlord’s evidence was performed by email the request of the Tenant and the Tenant confirmed his consent to service by this method. I find that the Landlord’s evidence was served on the Tenant pursuant to section 88 of the Act.

Preliminary Matter – Addition of Corporate Respondent and Removal of Past Agent

At outset of the hearing, RP stated that the residential premises were owed by a prior owner (“IDGLLP”) and that the applicant (“CD”) of this application was a former agent of IDGLLP. RP stated that, after to service of the 1 Month Notice, the residential premises were sold to a new owner (“FREAL”). RP stated that FREAL then appointed a new property manager (“DP”) to act as Landlord of the residential premises. To corroborate her testimony, RP submitted copies of a title search to verify ownership of the residential premises, BC Registry Services Corporate Search of DP and Property Management Agreement dated August 17, 2021 between FREAL and DP whereby DP was appointed the property manager and Landlord of the residential premises. As the result of the transfer of ownership and appointment of DP as Landlord, RP requested an amendment to the application to replace DP as the respondent and to remove CD as the applicant in this application.

Rule of Procedure 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the Landlord is seeking name DP as the respondent, and remove CD as the respondent, of the application. I find that request for these amendments should have been reasonably anticipated by the Tenant where there has been a transfer of ownership of a residential property. Therefore, pursuant to Rule 4.2, I order the Tenant's application be amended to appoint DP as the sole respondent, and to remove CD as the respondent, in this application.

Preliminary Matter – Severance of Tenant's Claims

At the outset of the hearing, I advised the parties that claims made in an application must be related to each other. Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As such, this hearing primarily addressed issues related to his dispute of the 1 Month Notice and, if the Month Notice was cancelled, then to consider the Tenant's request for reimbursement of the filing fee for his application. I also advised the Tenant that, as he is still in possession of the rental unit, his claim for an Order of Possession was not available as a remedy under the Act. Accordingly, I dismissed all of the Tenant's claims except for disputing the 1 Month Notice and for recovery of the filing fee for the application. The Tenant is at liberty to apply for any other claims under a new and separation application for dispute resolution.

Preliminary Matter – Landlord’s Request for Dismissal of Tenant’s Application

RH stated that CD served the Tenant with the 1 Month Notice. RH stated that IDGLLP provided DP with a copy of the Amendment that had been served by the Tenant on IDGLLP. However, RH stated that the Landlord did not know whether the Amendment had been filed with the RTB. RH requested that, in the event the Tenant had failed to file the Amendment with the RTB, the Tenant’s dispute of the 1 Month Notice be dismissed. I advised RH that the Amendment had been filed with the RTB on August 6, 2021. I declined RH’s request for dismiss the Tenant’s application to dispute 1 Month Notice at this point of the hearing.

Issues to be Decided

Is the Tenant entitled to:

- cancellation of the 1 Month Notice?
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72(1)?
- if the Tenant’s application is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 52(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant’s application and my findings are set out below.

The parties agreed the tenancy commenced on April 1, 2021 for a fixed term ending February 88, 22021. Pursuant to a promotional discount agreement dated March 5, 2021, the base rent of \$2,000.00 per month was discounted by of \$292.00 requiring the Tenant to pay net rent of \$1,708.00 on the 1st of each month. Payment of a security deposit by the Tenant to the Landlord was waived by the terms of the tenancy agreement. RH confirmed the Tenant paid the rent to December 31, 2021 but, as of the date of this hearing, the Tenant has not paid the rent due on January 1, 2022.

RH submitted a copy of the 1 Month Notice into evidence and stated it had been served by CD agent of the former owner. The 1 Month Notice indicated it had been served on

the Tenant's door and by email. No proof of service was submitted to corroborate service of the 1 Month Notice on the Tenant or the date of service. Although the 1 Month Notice was dated August 8, 2021, the Tenant testified he received it on August 6, 2021. RH was unable to provide an explanation for the date on the Notice. Regardless, the Tenant stated he filed the Amendment with the RTB to dispute the 1 Month Notice and RH acknowledged that IDGLLP had been served by the Tenant with the Amendment. I confirmed that the Amendment was filed with the RTB on August 6, 2021.

The 1 Month Notice listed two causes for ending the tenancy as follows:

Tenant or a person permitted on the property by the Tenant:

1. has caused extraordinary damage to the unit/site or property/park; and
2. Tenant has not done required repairs of damage to the unit/site/property/park.

The 1 Month Notice provides the following details of the causes for ending the tenancy:

The patio fence has been damaged and altered without the landlord's consent. [Previous landlord's name] gave you two time lines to fix the patio fence as it was when you moved in in (sic) the suite, and fix it as [previous landlord's name] standards. Unfortunately, you have failed to comply with on both dates July 22, 2021 and August 3, 2021.

This is One Month Notice to End Tenancy

RP stated that the residential premises consisted of three buildings with five entrances. RP stated that the building in which the Tenant resides has two entrances that are monitored and secured by the Landlord. RP stated that the residential premises have a history of having numerous thefts, vandalism and reported criminal activity. RP testified that rental unit is located on the back side of the residential premises and borders a community trail including a creek and ditch. RP stated the area poses a significant risk that an individual could slip and fall. RP stated that the Landlord constructed a fence ("the "Fence") to border off the natural area. RP stated that on or about July 15, 2021, the Landlord became aware that the Tenant had altered or modified the Fence.

RP stated the modification involved removing the Fence and making it a gate that opened to the area that bordered on the community trail. RP submitted that, aside from

the Tenant breaching the tenancy agreement, the alteration of the Fence has made the Landlord potentially liable should someone wander in and injure themselves on the 60 feet of property beyond the Fence. RP also stated that, the creation of a gate has increased the risk to the residential premises by creating an unmonitored access point to the residential premises.

RP referred to paragraph 34 of the Tenancy Agreement which states:

34. If the Tenant desires to complete any Improvements (as defined herein) to the Unit, the Tenant shall seek the Landlord's prior written consent and at such time provide the Landlord with detailed descriptions or plans of such proposed alterations or improvements. Improvements are inclusive of, but not limited to:

- a. Apply adhesive materials and/or inserting nails or hooks into walls or ceilings;
- b. Modifying the amount of heat, power, water or other utility normally used by the Unit and/or installing additional electrical wiring or heating units;
- c. Placing, exposing or allowing to be placed inside or outside the Unit any placard, notice, sign or advertising for any purpose whatsoever
- d. Affixing or erecting a satellite dish, radio, TV antenna and/or tower;
- e. Removing or adding walls or making any structure alterations;
- f. Painting, wallpapering or redecorating in a way that significantly alters the appearance of the Unit; and/or
- g. Installing any heavy articles(s) or object(s) including but not limited to non-Landlord owned appliances.

The parties acknowledged that service of notices between them could be effected by email. On July 17, 2021, IDGLLP sent the Tenant a notice by email that stated:

As per the inspection, we have conducted in your suite on July 22, 2021, you have failed to comply with the time line. Unfortunately, the damage to your suite has not been remediated. As per the instructions from the had office, [IP] will give you another week for fixing all the alterations that have been done to the fence.

We will be inspecting your suite on August 2, 2021. Please find attached your notice.

RP testified that, pursuant to the terms of the Tenancy Agreement, the Tenant was granted exclusive use of the property from the rear of the rental unit to the Fence. RH explained that, in order to determine whether the Fence had been remediated to its

original condition, the inspection had to be performed from the inside of the Fence and not from the outside. RH stated that formal notices for access were given to the Tenant. RH stated written notice was served on the Tenant and an inspection of the Fence was performed on July 22, 2021. Another inspection was inadvertently scheduled for August 2, 2021, being a holiday, and was rescheduled for August 3, 2021. The inspection performed on August 3, 2021 revealed the Tenant had not removed the gate and restored the Fence to its original condition.

The Tenant testified that he had been told at the time of renting the rental unit that there would be access through the fence. The Tenant stated that other tenants had been told they would also have access to the community trail from their rental units.

The Tenant referred to and submitted a number communications between the Landlord (and its predecessor) regarding the repairs, access to the rental unit by the Landlord and purported smoking on or about the rental unit. The Tenant submitted that the Landlord had ulterior motives for seeking access to the rental unit other than to perform an inspection of the Fence. The Tenant stated that the Landlord had interrogated an employee of the Tenant while she was in the rental unit regarding smoking. The Tenant testified that it was his belief that the Landlord was acting in a high-handed manner. The Tenant also stated that IDG LLP had promised, when he was considering renting the rental unit, that the residential premises would include a variety of amenities, but none of those amenities were provided.

Analysis

Sections 47(1) and 47(4) of the Act state in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

[...]

- (4) 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.

The 1 Month Notice submitted into evidence was dated August 8, 2021. The Tenant stated he received the 1 Month Notice on August 6, 2021 and filed the Amendment on August 6, 2021 to dispute the 1 Month Notice. Pursuant to section 47(4), the Tenant had until August 16, 2021 to file the Amendment or make a new application for dispute resolution to dispute the 1 Month Notice. The records of the RTB confirm that the Amendment was filed by the Tenant with the RTB on August 6, 2021. I find the Tenant made his application within the 10 day dispute period permitted by section 47(4) of the Act.

Based on the evidence of the Landlord and the Tenant, the Tenant modified or altered the Fence by installing hinges and lock onto the fence frame so that the fence would open. The Landlord notified the Tenant in writing on July 17, 2020 and July 22, 2021 that he was required remediate the fence. The Tenant admitted that, although he could do so, he has not taken any steps to remediate the fence as requested by the Landlord.

The Tenant did not provide any documentary evidence to support this claim nor did he call any witnesses to corroborate his claims that other tenants were told they would be entitled to have access to the community trail from their rental units. The Tenant did not submit any evidence that he had received written consent from the former or current Landlord that he had permission to alter or modify the Fence or to install hinges on the fence for opening and closing it. Although the Tenant stated he could easily remediate the Fence to its original condition, he admitted he has not done so notwithstanding the Landlord's written requests.

I find that the Tenant made a "structure alteration" to the Fence without the prior consent of the Landlord. I find the Tenant, after receiving two written requests, the Tenant refused or neglected repair the damage caused to the Fence within a reasonable period of time after the Landlord made the two written requests for him to do so. I find the Tenant is in breach of section 47(1)(g) of the Act. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, cause for ending the tenancy pursuant to subsection 47(1)(g) Act.

As I have found cause to end the tenancy under section 47(1)(g) of the Act, it is unnecessary for me to consider whether the tenancy should also be ended pursuant to section 47(1)(f) of the Act.

I have reviewed the 1 Month Notice and find that it complies with form and content requirements of section 52 of the Act. As such, I find the 1 Month Notice is valid. I therefore dismiss the Tenant's application to cancel it, without leave to reapply.

As I have dismissed the Tenant's application, I dismiss the Tenant's claim for reimbursement of his filing fee from the Landlord without leave to reapply.

Section 55(1) of the Act states:

Order of possession for the landlord

- 55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the Tenant's application and I have found the 1 Month Notice complies with section 52 of the Act, pursuant to section 55(1) of the Act, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached order on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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, 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: January 13, 2022

Residential Tenancy Branch