Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HANDY CAPABLE HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction and Preliminary Matters

On April 19, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

E.M. attended the hearing as an advocate for the Tenant. She advised that she made the Application, in her name, on behalf of the Tenant, despite not producing any documentation proving that she had the Tenant's authorization to do so. M.D. and P.C. attended the hearing as well, as agents for the Landlord. They confirmed that E.M. was not the Tenant. All parties confirmed who the Tenant was and that E.M attended a previous hearing on behalf of the Tenant (the relevant file number is noted on the first page of this Decision). As such, I have amended the Style of Cause on the first page of this Decision to correctly name the Tenant.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

E.M. advised that she served the Notice of Hearing package and some evidence to the Landlord by hand on April 28, 2022, and M.D. confirmed that this was received. As

such, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing package and some evidence.

E.M. then advised that she served the Tenant's evidence to the Landlord by posting it to the Landlord's office door on August 3, 2022. Given that there was a significant period of time since making the Application, she was asked why she waited until virtually the last possible moment to serve this evidence to the Landlord. She could not provide an answer, and then she stated that she intentionally waited until receiving a reminder email from the Residential Tenancy Branch to serve this evidence to the Landlord. M.D. confirmed that she received this evidence on August 4, 2022. As this evidence was received pursuant to the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have accepted this evidence and will consider it when rendering this Decision.

However, given that E.M. had recently participated in a previous Dispute Resolution hearing, I find it reasonable to conclude that E.M. would have been familiar with service of evidence deadlines. Furthermore, I found her hesitations about why she waited so long to serve this evidence to be dubious, and I find it more likely than not that she intentionally did this in an effort to prejudice the Landlord.

M.D. advised that the Landlord's evidence was posted to the Tenant's door on August 9, 2022, and E.M. confirmed that this was received that same day. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2018, that the rent was established at an amount of $226.00 per month, and that it was due on the first day of each month. A security deposit of $300.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

M.D. advised that after they received the March 2, 2022 Decision, they emailed E.M. on March 4, 2022, with the pet application form and there was no response for almost two weeks. She stated that E.M. responded on March 14, 2022, advising that she was seeking clarification on the previous Decision. On March 17, 2022, another email was sent to E.M. informing her that the pet application, amongst other documents, would be served in person the next day. She referenced the documentary evidence to support these submissions.

However, when these documents were attempted to be served, E.M. became belligerent and refused to take the documents. This was not the first time that E.M. has behaved in this manner. She referenced the documentary evidence submitted to support this position. As such, these documents, including the pet application, were sent to the Tenant via registered mail on March 21, 2022. In each instance where this package was served, there was a deadline of April 2, 2022, for the Tenant to complete the pet application.

In an effort to have these documents completed, E.M. was advised that they would come in person on April 2, 2022, and they were accompanied by the police. She stated that E.M. did not let them into the rental unit to have these documents completed, so it was their opinion that she did not want to fill them out. She advised that E.M.’s verbal

and aggressive behaviour did not cease until a peace officer was present.

E.M. referred to the previous Decision which pertained to the cancellation of a previous One Month Notice to End Tenancy for Cause. She stated that it was determined that the notice would be cancelled, and that the tenancy would continue. She confirmed that she received the Landlord's email of March 14, 2022, regarding attachments for the pet application, along with other documents. She stated that she could not print these documents, so she asked M.D. for a hard copy of them on March 10, 2022; however, she was not provided with a copy of the pet application.

She then confirmed that she received the Landlord's email on March 17, 2022, which referenced service of these required documents on March 18, 2022. She refuted that she was yelling and screaming on March 18, 2022, or that she refused to take the documents. She stated that she had no knowledge of the Landlord sending these documents by registered mail, but then she confirmed she received the Landlord's email on March 28, 2022 regarding this package, so she picked it up on March 29, 2022.

She referenced an email dated March 31, 2022, and she read the following excerpt: "The document package, fully filled out (except for the pet documents), with each page initialled to indicate you have read it, should be ready for pick up at 1 pm Saturday April 2." She stated that it was her interpretation of this excerpt that the Landlord was telling her not to fill out the included pet application, so she did not. However, she also indicated that she took steps to schedule vet appointments to prepare the pet so that it would qualify as a suitable pet under the tenancy agreement.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

In considering this matter, I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as

to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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*
>
> *(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
>
> *(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;*
>
> *(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:*
>
> *(i)the date the tenant receives the order;*
> *(ii)the date specified in the order for the tenant to comply with the order.*

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I am satisfied that emails, with attached documents, were provided to E.M. as far back as March 4, 2022, and that the importance of these documents being completed were emphasized. I am also satisfied that the Landlord made multiple other attempts to get these documents to E.M. so that they could be completed by the April 2, 2022 deadline.

In addition, when reading the previous Decision dated March 2, 2022 regarding the cancellation of a prior One Month Notice to End Tenancy for Cause, I note that the Arbitrator indicated the following with respect to the pet in the rental unit:

> As for the dog in the rental unit, I find that the Pet Ownership Rules indicated that the Tenant must submit an application to the Landlord to have a pet registered. I find that the Tenant has provided insufficient evidence to demonstrate that they have submitted an application to the Landlord to gain approval for registration. I find that while the Tenant has breached the pet owner agreement, I find that the breach is not significant to the extent that the tenancy should end.
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> Nevertheless, the Tenant is now warned that they must comply with the regulations relating to pet application and registration. Furthermore, the Tenant is encouraged to discuss their situation with the Landlord and provide the Landlord with information relating to changes to the tenancy such as the Tenant's need for a caretaker prior to making changes without the Landlord's being made aware. Increased incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy.

I concur with this determination that the pet has not been registered and that is a breach of the tenancy agreement. Furthermore, it is clear that this was made obvious to the Tenant in this previous Decision. In my view, it is wholly evident that the Tenant was explicitly cautioned to come into compliance with respect to the pet application, and that failure to do so could result in a jeopardization of the tenancy. When reading this previous Decision, it could not be more apparent that the Tenant was warned and provided with an additional opportunity to correct their breaches, or risk eviction.

However, when receiving testimony from E.M., it was evident that it was her belief that the Tenant had "won" in this previous hearing, and E.M. stated as much. While the Landlord was not successful in the previous hearing in justifying service of the first One Month Notice to End Tenancy for Cause, there was enough evidence provided for the previous Arbitrator to caution the Tenant about any further non-compliance, or the ongoing escalation of incidents.

Given this previous Decision, and the undisputed evidence that E.M. was made aware of the importance of the completion of the pet application, and then subsequently provided with a copy of this application multiple times, I am satisfied by E.M.'s ensuing conduct that it appeared as if she felt emboldened by the false sense of "winning" in the previous hearing. In addition to the numerous emails prior, that support the position that E.M. was informed of the importance of completing these documents, E.M.'s email of March 29, 2022 confirms that she had received these documents and that she was waiting to hear from her lawyer before completing them. Not only am I satisfied that she was provided with these documents multiple times, I find that it is clear that E.M.'s pattern of behaviour was such that she was attempting to delay or hinder any attempts to rectify the breaches of the tenancy agreement that have already been established.

Furthermore, while E.M. claimed that she interpreted the Landlord's email of March 31, 2022, as being advised not to fill out the pet application, I do not accept that this interpretation would make any rational sense, nor do I find that any person reading that excerpt could possibly interpret it in that manner. Based on all of the previous communication provided to E.M. regarding the importance of filling out the pet application, it does not make any logical sense why the Landlord would then tell her not to bother filling out the form. Moreover, given that she took steps to attempt to bring her pet into compliance with the pet regulations, it is not consistent with common sense or ordinary human experience why she would have attempted to do so had it been her belief that the Landlord did not require her to fill out this pet application at all.

In assessing E.M.'s conduct, I find it important to note that from the start of the hearing, I was satisfied that she, more likely than not, deliberately served the Tenant's evidence to the Landlord as late as possible. This caused me to be dubious of her credibility from the outset. In conjunction with the doubts raised above, I found that the reliability of her testimony throughout the hearing to be increasingly suspect. It was evident that instead of working with the Landlord and coming into compliance, as suggested in the previous Decision, E.M. clearly elected to make things as difficult as possible.

Furthermore, in combining this conclusion with E.M.'s alleged inappropriate conduct in person with representatives of the Landlord, I find it more likely than not that the Landlord's documentary evidence was more consistent with E.M.'s demonstrated manner of dealing with the Landlord. As such, I am satisfied that E.M.'s submissions were not credible or reliable, and that she attempted to portray an alternate series of events that were not truthful. As a result, I prefer the Landlord's evidence on the whole.

Ultimately, I am satisfied that E.M. has demonstrated a consistent pattern of deliberate and unacceptable behaviour that, even after being cautioned in a previous hearing, has continued to escalate issues unnecessarily. I find that these behaviours have, in turn, jeopardized the Tenant's tenancy and warranted service of the Notice for significantly interfering with or unreasonably disturbing another occupant or the Landlord. Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, the Order of Possession takes effect at **1:00 PM on August 31, 2022** after service on the Tenant.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective on **August 31, 2022 at 1:00 PM 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: August 23, 2022

Residential Tenancy Branch