



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNC**

Introduction

This hearing, reconvened from an earlier hearing on August 8, 2022, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties were represented at the teleconference hearing and given an opportunity to be heard. Landlord was represented by counsel.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

As both parties were present service was confirmed. The parties each testified that they received the respective materials. While the tenant submits that some of the landlord's evidence was not served within the timelines set under the Rules of Procedure they testified that all materials were received over a week prior to the hearing.

Based on the testimonies I accept that the parties have been served with the materials in accordance with sections 88 and 89 of the *Act* and in any event have been sufficiently

served in accordance with section 71(2). The tenant confirmed that they have had ample opportunity to review the landlord's evidentiary materials well in advance of the scheduled hearing date. Therefore, in accordance with my authority under Rules 3.17 and 3.19 and in accordance with the principles of natural justice and procedural fairness I have not excluded any pieces of evidence submitted by the parties.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover their filing fee from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy originally began on May 1, 2021. The monthly rent is \$3,400.00 payable on the first of each month. A security deposit of \$1,700.00 was collected and is still held by the landlord. The rental unit is a single detached home.

There have been several earlier dispute resolution hearings under the file names on the first page of this decision. The decisions of September 2, 2021 and April 5, 2022 pertained to the tenant's application seeking repairs, monetary awards and other claims unrelated to a notice to end tenancy. The decision of May 5, 2022 pertained to cancellation of the landlord's notice to end tenancy dated January 24, 2022 issued due to a breach of a material term of the tenancy. The presiding arbitrator cancelled that 1 Month notice in their decision.

The landlord issued the present 1 Month notice dated June 22, 2022 which the tenant confirmed receiving on or about June 27, 2022. The reasons provided on the notice for the tenancy to end are:

Tenant or a 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;*

- *put the landlord's property at significant risk.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord gave evidence regarding the ongoing disruptive and hostile behaviour of the tenants and the ways in which they have interfered with the lives of the named landlord, their family members and the employees of the property management company that was retained to manage the property.

The landlord's witness MM gave evidence regarding the conduct of the tenants after the 1 Month Notice was served. The witness testified that they received threatening email correspondence from the tenant after they were served. Copies of the correspondence were not submitted into documentary evidence but read during the hearing and the contents were confirmed by the tenant.

The landlord called as a witness their ZA, their former property manager, who testified that the tenant JD has made numerous rude, entitled and threatening remarks to them on multiple occasions, both in person and in voice mails left at all hours. The witness said that the property management company was retained in September 2021 and they were the primary caretaker of the rental property. The witness said that on numerous occasions the tenant JD yelled, threatened, and swore at them about various perceived deficiencies with the property or the company's services. The witness said they felt in physical danger due to the conduct of the tenant and advised the company that staff should not attend at the property alone. The tenant has attended at the property management company and threatened other staff members. The witness testified about ongoing issues with the tenant which resulted in numerous reports to the police and ultimately the company choosing to end their contract to manage the rental property.

The landlord submits that the harassment and threats from the tenants were not restricted to the caretaker but also directed at the personal respondent landlord, their family members including underage children and employees at their place of business. The landlord gave evidence that they have received correspondence and voicemails from the tenant JD threatening physical violence, legal actions and invasion of privacy by talking about knowledge of their family members' whereabouts.

The tenant JD confirms that they have hired private investigators to follow the caretaker and have sent correspondence and voice mails and have communicated to the landlord

and the property management company about their dissatisfaction with the tenancy. The tenant said they hired a private investigator as they believed the caretaker was initially stalking and threatening them.

The tenant disputes that their behaviour is unreasonable or a significant interference and made lengthy submissions about their complaints about the tenancy. The tenant says that as the police have declined to make arrests or issue criminal charges their conduct is acceptable.

The tenant characterizes the landlord and their agents as the ones who are unreasonable and have failed to make repairs or provide services or facilities required under the tenancy agreement. The tenant disputes that their behaviour has caused disruption and claims that their interactions with others have been cordial and professional. The tenant further testified that the breaches by the landlord give rise to a right to a rent reduction which they have not pursued.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

Based on the totality of the evidence I find that the landlord has met their evidentiary onus to establish that there is a basis for this tenancy to end. I find the hiring of a private investigators to pursue the landlord and their agents and the numerous voice mails, correspondence and interactions to be unreasonable disturbances and significant interference which is not warranted regardless of the tenants' complaints about the tenancy.

The parties disagree on the characterization of their conduct, but they agree on much of the underlying actions. The tenant confirmed that they have hired a private investigator to pursue and gain personal information about the landlord, their family members and their agents. I find this to be an inherently unreasonable act that significantly interferes

with the victims' right to privacy. I find the tenants' submission that the landlord initiated the dispute by stalking them to not be supported in any of the evidentiary materials and in any event be no excuse to further escalate the conflict by retaining an investigator to gather personal information.

An ordinary reading of the text of the email correspondence entered into evidence by the parties shows the tenant making demands with threats of consequences if the landlord does not accede. I find that the conduct of the tenant shows a pattern of unreasonable behaviour which goes beyond what would be acceptable to a reasonable person under the circumstances. I accept the evidence that these breaches are not a singular lapse in judgment but part of a pattern of behaviour on the part of the tenant that has been ongoing and escalating over the course of the tenancy.

I find the tenants' submission that their behaviour is not unreasonable as the police have failed to charge the, is not persuasive. Conduct can be unreasonable, disruptive and a significant interference even if they do not rise to the level of being criminally actionable. I further find the tenants' characterization of their own behaviour to be professional and cordial to not be believable given the volume of evidence of the landlord showing otherwise.

I find the testimony of the landlord's witnesses to be cogent, consistent and believable and supported in the documentary materials such as correspondence drafted immediately after incidents. The tenant gave lengthy testimony about various deficiencies they have found with the tenancy, ongoing disputes with the landlord and their agents and made reference to video and audio recordings, none of which were submitted into evidence.

I find that the hiring of a private investigator to gain personal information about the landlord and their agents, attempting to contact the landlord at their place of business to be inherently unreasonable acts which disturb and significantly interfere with others. I find the volume, nature and frequency of the tenants' communications with the landlord and their agents to be unreasonable and not warranted under the circumstances.

Based on the evidence before me I find the tenants' actions are unreasonable disturbances and significant interference of the landlord, their family members, and their agents. I therefore find that the landlord has established, on a balance of probabilities, the basis for the notice to end tenancy.

I further find, based on the undisputed evidence of the parties, that the conduct of the tenant in issuing correspondence to the landlord and their agents, making threatening remarks and acting inappropriately have continued after the 1 Month Notice was issued and there has been no

I find that the landlord has provided sufficient evidence to demonstrate that there is cause for issuing the 1 Month Notice and accordingly dismiss the tenant's application.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

Accordingly, I issue an Order of Possession in the landlord's favour. As the effective date of the 1 Month Notice has passed, I issue an Order enforceable 2 days after service on the tenant.

Because I am concerned with the fundamental nature of the violation on the part of the tenant by hiring investigators to follow the landlord, their agents and family members and obtain personal information, I am sending a copy of this decision to my manager.

My manager will review this decision and if they are of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this decision along with any other relevant materials from this dispute resolution file to the Compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. They have the sole authority to determine whether to proceed with a further

investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of this dispute resolution file, they can also consider additional evidence that was not before me. They are not bound by the findings of fact I have made in this decision. The orders made in this decision are, however, final and binding and cannot be challenged or set aside in the administrative penalty process.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises 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 22, 2022

Residential Tenancy Branch