Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, LRE, LAT, OLC, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) and/or the tenancy agreement, for authority to change the locks, for an Order restricting or setting conditions on the Landlord's right to enter the rental unit, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Tenant withdrew the application for authority to change the locks.

The Tenant stated that on the Dispute Resolution Package was sent to the Landlord, via registered mail. The Property Manager acknowledged receipt of these documents.

On May 12, 2022 the Tenant submitted a copy of the One Month Notice to End Tenancy for Cause to the Residential Tenancy Branch. The Tenant stated that he does not recall if a copy of this document was served to the Landlord. The Property Manager stated that this document was received from the Tenant. As the One Month Notice to End Tenancy for Cause was received by the Landlord, it was accepted as evidence for these proceedings.

On August 31, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Property Manager stated that this evidence was served to the Tenant, via registered mail, on August 31, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On September 06, 2022 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant initially stated that he does not recall how/when this evidence was served to the Landlord. The Property Manager stated that the evidence was not received.

Upon being advised that the September 06, 2022 evidence package would not be accepted as evidence, the Tenant testified that the documents were delivered to the Landlord the "next day". The Tenant clarified that the "next day" was September 07, 2022. The Tenant subsequently testified that the documents were delivered to the Landlord the "same day". The Tenant clarified that the "same day" was September 06, 2022. The Tenant stated that the documents were propped up against the door to the Landlord's business address. The Property Manager reiterated that the evidence was not received.

I find that the Tenant has submitted insufficient evidence to establish that the evidence package of September 06, 2022 was delivered to the Landlord's business address. In reaching this decision I was influenced by the Property Manager's testimony that it was not received. I found the Property Manager's testimony to be consistent and forthright throughout the hearing and I can find no reason to discard his testimony on regard to the evidence not being received.

Conversely, I find that the Tenant's evidence regarding service of evidence was not reliable. He initially testified that he did not know how or when the evidence package of September 06, 2022 was served and then he presented two different versions of when it was served. I find this testimony is not particularly reliable. The burden of proving that evidence is served rests with the party serving the evidence.

Even if I accepted the Tenant's testimony that the September 06th evidence package was propped up against the door to the Landlord's business address, I would conclude that this method of service does not comply with section 88 of the *Residential Tenancy Act (Act*).

Section 88(g) of the *Act* permits a tenant to service evidence to a landlord by attaching a copy to a door or other conspicuous place at the address at which the person resides or at the address at which the person carries on business as a landlord. I find that propping a document up against a door is not the same as "attaching" it, as propping it against the door could result in the document being more easily moved.

Even if I accepted the Tenant's testimony that the September 06th evidence package was left at the Landlord's door on September 06, 2022, I would conclude that the evidence was not served to the Landlord in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure. Rule 3.14 of the Residential Tenancy Branch Rules of Procedure require that evidence must be received by the respondent not less than 14 days before the hearing. Documents posted on a door are "deemed received" 3 days after they are posted on the door, pursuant to section 90 of the *Act*, which in these circumstances would be September 09, 2022.

As I am not satisfied that the Landlord received the evidence package of September 06, 2022 and I am not satisfied it was properly served to the Landlord, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The Landlord and the Tenant agree that the Tenant and a female are named on the tenancy agreement.

The parties agree that the company named as the Applicant on this Application for Dispute Resolution is not named on the tenancy agreement.

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the male Tenant as the Applicant in this matter.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?
Is there a need to suspend or set conditions on the Landlord's right to enter the rental

unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in January of 2016.

The Property Manager stated that rent is due by the first day of each month. The Tenant stated that it is due, in advance, by the last day of each month.

The Landlord and the Tenant agree that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, dated April 28, 2020, which declared that the unit must be vacated by May 31, 2020. The Property Manager stated that this One Month Notice to End Tenancy for Cause was sent to the Tenant, via registered mail, on April 28, 2022. The Tenant acknowledged receiving it on May 04, 2022.

The Property Manager stated that the aforementioned One Month Notice to End Tenancy for Cause was incorrectly dated.

The Landlord and the Tenant agree that the Landlord served the Tenant with a second One Month Notice to End Tenancy for Cause, dated May 11, 2022, which declared that the unit must be vacated by June 30, 2022. The Property Manager stated that this One Month Notice to End Tenancy for Cause was sent to the Tenant, via registered mail, on May 11, 2022. The Tenant acknowledged receiving it shortly thereafter.

The Landlord and the Tenant agree that both Notices to End Tenancy declare that the tenancy is ending because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant has breached a material term of the tenancy that was not corrected within a reasonable time; and the Tenant has not done required repairs to the unit.

The Landlord and the Tenant agree that in the "Details of Events" section of both Notices to End Tenancy, the Landlord declares that the tenancy is ending because of a caution notice served on December 21, 2021.

The Landlord submitted a copy of a caution notice dated December 21, 2021 that advises the Tenant that the municipality has determined that at least one "wrecked"

vehicle is parked on the property. The Landlord advises the Tenant to either remove the “wrecked” vehicles; to move the “wrecked” vehicle inside; or to contact the municipality to inform them that there are no “wrecked” vehicles on the property.

The Landlord submitted a copy of a letter from the municipality, dated December 20, 2021. In the letter a bylaw officer declares that at least one wrecked vehicle is parked on the property. It declares that the “wrecked” vehicle must be removed or moved indoors or that the municipality should be contacted to inform them that there are no “wrecked” vehicles on the property.

The Tenant stated that:

- He is not contravening the bylaw regarding storage of “wrecked” vehicles;
- The definition of “wrecked” vehicle in the bylaw means that the vehicle cannot be started;
- In December of 2021 he had 7 vehicles on the property but none of them met the definition of being “wrecked”, as they could all be started;
- On January 11, 2022 he contacted the bylaw officer who wrote the letter of December 20, 2021, and informed him that all of the vehicles on the property could be started;
- On January 11, 2022 he and that bylaw officer agreed the Tenant would remove 3 vehicles by April of 2022;
- He currently has one vehicle on the property that needs a new motor;
- He currently has 4 other vehicles on the property which can all be started;
- Because he is not contravening the municipal bylaw by storing “wrecked” vehicles, neither he nor the Landlord will be required to pay a fine;
- In the event he is contravening the bylaw he will be ticketed, which is what occurred in 2018;
- In the event he is ticketed for contravening the bylaw he will dispute the ticket because he is not storing “wrecked” vehicles, which is what incurred in 2018;
- He successfully disputed the ticket in 2018;
- In the event he is unsuccessful in disputing any ticket, he will pay the fine;
- As he would pay the fine imposed, any bylaw he is contravening would have no impact on the Landlord; and
- He does not agree with the bylaw officer’s conclusion in the email of April 28, 2022, that there are 2 “wrecked” vehicles on the property as all of the vehicles on the property on that date could be started.

The Property Manager stated that the Landlord received an email from the municipality,

dated April 28, 2022, in which a different bylaw officer outlined various bylaw infractions at the property, including storage of “wrecked” vehicles. He stated that this bylaw officer told him that a fine would be issued to the Landlord if the infractions were not remedied. In the email the bylaw officer declares “we are now preparing this file for a possible prosecution”.

The Property Manager #2 stated that the bylaw officer who wrote the email of April 28, 2022 told her that the Landlord would have to go to court if the bylaw infractions were not remedied.

At the hearing the Property Manager acknowledged that the One Month Notice to End Tenancy for Cause did not inform the Tenant of the nature of the repairs they have allegedly failed to make.

When asked what material term the Tenant has breached, the Property Manager stated that the Tenant has been repeatedly late paying rent and the Tenant has refused the Landlord’s request to inspect the unit.

When asked if the Landlord has entered the rental unit without proper authority, the Tenant stated that he has no evidence of the Landlord entering without property authority.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
(b) the tenant is repeatedly late paying rent;
(c) there are an unreasonable number of occupants in a rental unit;
(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 a lawful right or interest of the landlord

or another occupant, or
(iii) put the landlord's property at significant risk;
(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
(i) has caused or is likely to cause damage to the landlord's property,
(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
(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;
(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;
(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;
(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
(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.

On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated April 28, 2020 and a second One Month Notice to End Tenancy for Cause, dated May 11, 2022. I find that the first One Month Notice to End Tenancy for Cause was dated incorrectly and that the second One Month Notice to End Tenancy for Cause was served to replace the first. As the first One Month Notice to End Tenancy for Cause is essentially replaced by the One Month Notice to End Tenancy for Cause dated May 11, 2022, I will only be determining whether the second One Month Notice to End Tenancy for Cause should be enforced or

set aside.

On the basis of the One Month Notice to End Tenancy for Cause that was submitted in evidence, I find that the Landlord gave the Tenant proper notice of the Landlord's intent to end the tenancy pursuant to section 47(1)(d)(ii) of the *Act*. Specifically, I find that the Landlord clearly informed the Tenant that the Landlord wished to end the tenancy on the basis of information provided to the Landlord by bylaw officers in relation to storage of "wrecked" vehicles on the residential property.

On the basis of the undisputed evidence, I find that the Landlord received a letter from the municipality, dated December 20, 2021, in which the bylaw officer declares that at least one wrecked vehicle is parked on the property. It declares that the "wrecked" vehicle must be removed or moved indoors or that the municipality should be contacted to inform them that there are no "wrecked" vehicles on the property.

On the basis of the undisputed evidence, I find that the Landlord informed the Tenant, in a caution notice dated December 21, 2021, that the Tenant must either remove the "wrecked" vehicles; move the "wrecked" vehicle inside; or contact the municipality to inform them that there are no "wrecked" vehicles on the property.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant complied with the caution notice of December 21, 2021 when he contacted the bylaw officer and informed him that he had no "wrecked" vehicles on the property.

On the basis of the undisputed evidence, I find that on April 28, 2022 a different bylaw officer outlined various bylaw infractions at the property, including storage of "wrecked" vehicles.

While I accept that two bylaw officers have informed the Landlord that "wrecked" vehicles are being stored on the property, I find that the Landlord has submitted insufficient evidence to establish that the Tenant is storing vehicles in a manner that contravenes a local bylaw.

In reaching this conclusion I was heavily influenced by the undisputed evidence that neither the Tenant nor the Landlord has recently been issued a bylaw infraction ticket for storing "wrecked" vehicles. Once a ticket has been issued for an alleged infraction, the Tenant would have the right to dispute the ticket on the basis of his submission that

the vehicles on the property do not meet the definition of “wrecked” vehicles.

In my view, it would be premature for me to determine that the Tenant is storing “wrecked” vehicles before he has a chance to refute the submission of the bylaw officers. In the event a ticket is issued and the Tenant does not successfully dispute the ticket, it is entirely possible that the Landlord would have grounds to end the tenancy. That would, however, be a matter to be determined at a later date.

Even if I had sufficient evidence to establish that the Tenant was contravening a bylaw be storing “wrecked” vehicles, I find that the Landlord has established insufficient evidence to establish that this has “seriously jeopardized the health or safety or lawful interest of another occupant or the landlord”.

I find that the Landlord has submitted insufficient evidence to establish that the Landlord will be fined if the Tenant contravenes this bylaw. In the absence of evidence to show that the Landlord would be subject to a financial penalty, I cannot conclude that the Tenant’s actions would jeopardize the Landlord’s lawful interest.

In concluding that the Landlord has submitted insufficient evidence to establish that the Landlord will be fined if the Tenant contravenes the bylaw, I was heavily influenced by the absence of documentary evidence that supports the Property Managers’ testimony that they were told the Landlord would have to go to court if the bylaw infractions were not remedied.

I find the email sent to the Landlord by a bylaw officer on April 28, 2022 does not help to establish that the Landlord would be subject to a penalty if the bylaw infractions were not remedied. Although the bylaw officer declares “we are now preparing this file for a possible prosecution”, it does not declare who will be named in the “possible prosecution”.

On the basis of the undisputed evidence that the Tenant was previously ticketed for storing “wrecked” vehicles, I find it entirely possible that the Tenant would continue to be the subject of tickets for contravening the bylaw. On the basis of the Tenant’s testimony that if he is unsuccessful in disputing any ticket he receives, he will pay the fine, I cannot conclude that the Landlord would be subject to a financial penalty. As such, I cannot conclude that the Tenant’s actions would jeopardize the Landlord’s lawful interest.

For reasons listed above, I cannot conclude that the Landlord has established grounds to end this tenancy pursuant to section 47(1)(d)(ii) of the *Act.*

Section 52(2)(d) of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and must, except for a notice under section 45 (1) or (2), state the grounds for ending the tenancy. In my view this requires the Landlord to provide the Tenant with specific reasons for ending the tenancy. This is why the One Month Notice to End Tenancy for Cause has an area in which the Landlord is required to provide "Details of the Event(s)". This information is necessary, in my view, as it provides tenants with a clear understanding of why the tenancy is ending and it provides them with the opportunity to dispute those declared reasons.

Although the One Month Notice to End Tenancy for Cause declares that the tenancy is ending, in part, because the Tenant has not done required repairs to the unit, I find that the Notice did not provide the Tenant with any information regarding the nature of the repairs that are deemed necessary. As the Landlord did not provide the Tenant with this essential information, I find that the Landlord has not yet properly informed the Tenant of why the Landlord wishes to end the tenancy for this reason. As such, I will not be determining whether the Landlord has the right to end this tenancy pursuant to section 47(1)(g) of the *Act*. The Landlord retains the right to serve the Tenant with another One Month Notice to End Tenancy for Cause for this reason.

Although the One Month Notice to End Tenancy for Cause declares that the tenancy is ending, in part, because the Tenant has breached a material term of the tenancy, I find that the Notice did not explain what material terms the Tenant has allegedly breached. As the Landlord did not provide the Tenant with this essential information, I find that the Landlord has not yet properly informed the Tenant of why the Landlord wishes to end the tenancy for this reason. As such, I will not be determining whether the Landlord has the right to end this tenancy pursuant to section 47(1)(h) of the *Act*. The Landlord retains the right to serve the Tenant with another One Month Notice to End Tenancy for Cause for this reason.

In the absence of evidence to establish that the Landlord has entered the rental unit without proper authority, I dismiss the Tenant's application for an Order restricting or setting conditions on the Landlord's right to enter.

For the benefit of both parties, section 29 of the *Act* reads:

29 *(1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*
(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
(i)the purpose for entering, which must be reasonable;
(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
(d)the landlord has an order of the director authorizing the entry;
(e)the tenant has abandoned the rental unit;
(f)an emergency exists and the entry is necessary to protect life or property.
(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I find that the Application for Dispute Resolution has merit and that the Tenant is entitled to recover the for filing the Application for Dispute Resolution.

Conclusion

As the Landlord has failed to establish grounds to end the tenancy, the One Month Notice to End Tenancy for Cause is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant's application for an Order restricting or setting conditions on the Landlord's right to enter is dismissed.

The Tenant has established a monetary claim of $100.00 as compensation for the cost of filing this Application for Dispute Resolution and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce this monetary Order through Province of British Columbia Small Claims Court, the Tenant has the right to withhold $100.00

from one monthly rent payment, pursuant to section 72(2) of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 20, 2022

Residential Tenancy Branch