Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding DEVON PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: **CNE**
Landlord: **OPC, FFL**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order of Possession for the One Month Notice pursuant to Sections 47 and 55 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and his Witness attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Tenant's Notice of Dispute Resolution Proceeding states that the Tenant received the Landlord's One Month Notice by registered mail on October 16, 2022. The Landlord uploaded a Proof of Service form #RTB-34 that the One Month Notice was served by registered mail on October 7, 2022. I noted the registered mail tracking number on the cover sheet of this decision. I find the Tenant was deemed served on October 12, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenant applied for dispute resolution after receiving the One Month Notice on October 26, 2022. The Tenant did not upload a proof of service of his Notice of Dispute Resolution Proceeding package which was issued to him on November 9, 2022. Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;
(b) if the person is a landlord, by leaving a copy with an agent of the landlord;
(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
(f) by any other means of service provided for in the regulations.

As the Tenant did not provide proof of service to the Landlord at all with the NoDRP package, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Tenant's application against the Landlord. I dismiss the Tenant's application.

The Landlord served the Tenant with their Notice of Dispute Resolution Proceeding package-OP and evidence on December 15, 2022 by Canada Post registered mail (the "NoDRP package-OP"). The Landlord uploaded the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package-OP five days after mailing them on December 20, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the One Month Notice?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that this tenancy began as a fixed term tenancy on May 1, 2013. The fixed term ended on April 30, 2014, then the tenancy continued on a month-to-month basis. Monthly rent is $883.22 payable on the first day of each month. A security deposit of $375.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or, put the landlord's property at significant risk; the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit; and the tenant has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was October 7, 2022.

The Landlord provided further details of the causes to end this tenancy as:

After receiving complaints of very unpleasant smells on the fourth floor, on August 15, 2022, inspections were done of units including #403, which revealed extraordinarily unclean and unsanitary conditions in unit #403, including feces on the carpet, pungent smells, and at least 3 cats, with no permission having been provided by the landlord for the tenant to have pets. On August 24, 2022 a letter was sent to the tenant requesting that these infractions of material terms of the tenancy agreement be rectified, including cleaning of the unit and removal of all pets by September 18, 2022, with re-inspection scheduled for September 19, 2022. An extension was requested by the tenant prior to that date, and the follow-up re-inspection was rescheduled for October 3, 2022. That inspection reveled that conditions were much the same, with a strong smell permeating from the unit, feces still on the floor in each room, and two cats seen in the unit.
Property damage to the building occurred once on April 13, 2022 and again on September 23, 2022. On both occasions, the tenant had allowed their kitchen sink to overflow and cause water to flow through the ceiling of the unit below. A restoration company was required on both occasions.

The Landlord testified that they received complaints from other tenants for unpleasant smells coming from the Tenant's rental unit. The Landlord inspected the suite and found it terribly unclean with cat feces all over the carpet. The smells were very pungent, and the Landlord noticed that there were three cats in the rental unit for which the Tenant did not have permission.

The Landlord issued a breach letter on August 24, 2022. In summary, the letter outlined tenancy agreement sections 18-Pets, 20-Storage, and 27-Repairs, and how the Tenant has breached these terms of their agreement. The Landlord set September 18, 2022 as the date the Tenant must remove all pets from the property, and that he return and maintain the rental unit to reasonable health, cleanliness, and sanitary standards throughout. On September 12, 2022, the Tenant sought an extension to the deadline date the rental unit was to be restored to a clean standard. The Landlord testified that they provided October 3, 2022 as the new deadline date.

On October 3, 2022, the Landlord re-inspected the Tenant's rental unit. They found the suite still very dirty and covered in cat feces on the flooring, including the carpet and vinyl. The Landlord's general notes of the state of the rental unit was:

> *P (poor): very poor, biological hazzard?, very unsanitary*
> *-concerns of tracking fecal matter into common areas*
> *-smell emanates into hall – very pungent!*

On two occasions, the Tenant has forgotten to turn off his kitchen faucet, and the overflowed water has leaked into the suite below his. The Landlord's Witness testified that when they went to the Tenant's rental unit, they had a difficult time opening the door, the smell and garbage was unbelievable. They went in and turned off the water. The Witness stated the water that ran into the lower rental unit was yellow as it had gone through kitty litter in the Tenant's rental unit and feces that was all over the floor in his suite.

The Landlord is seeking an Order of Possession.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

> ***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 47 of the Act is the relevant section of the legislation in this matter. The Tenant was deemed served with the Landlord's One Month Notice on October 12, 2022. I find the Landlord's One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied late for dispute resolution in this matter, and also did not prove that he served the Landlord with his NoDRP package. I dismissed his application, so accordingly, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice.

Based on the Landlord's undisputed testimony in this matter, I find the Landlord has proven on a balance of probabilities cause to end this tenancy. I grant an Order of Possession to the Landlord effective against the Tenant two days after service on the Tenant.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Conclusion

The Landlord's One Month Notice is upheld, and I grant an Order of Possession to the Landlord effective two days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. 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.

The Landlord may deduct the $100.00 application filing fee from the security deposit due to the Tenant.

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: March 06, 2023

Residential Tenancy Branch