Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application filed by the tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the application and respective evidence submissions.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenant's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause? Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy for this two-bedroom apartment unit began in October 2014. The property contains a total of 64 rental units in multiple buildings. The monthly rent as of March 1, 2023 is $971.00. The current property management company took over management of the property on October 11, 2022.

The landlord issued the One Month Notice to the tenant on November 25, 2022. The effective date of the One Month Notice was December 31, 2022. The tenant filed an application to dispute the Notice within the applicable time period under the Act.

The One Month Notice was issued on the grounds that the tenant has the put the landlord's property at significant risk.

The landlord's agent submits that they took over management of the property in October 2022. At that time they observed 13 units that had unapproved plastic tarp on covering the balcony areas of their respective units. All 13 units were issued breach notices to remove the plastic tarps. Although some other also required a final notice, all units complied with the landlord's request to remove the tarps with the exception of the tenant.

The landlord's agent testified that a local fire chief also advised the landlord that plastic tarp on a balcony is not good practice as it is a potential fire hazard.

The landlord submitted a copy of a breach letter issued to the tenant dated October 31, 2022. The breach letter states the tenant made unapproved alterations and requested the tenant remove the plastic tarp from the balcony. The tenant was provided until November 16, 2022 to correct the breach. The landlord also submitted a final notice issued to the tenant dated November 18, 2022, by which the tenant was given a final opportunity to remove the plastic tarp by November 21, 2022. The landlord also submitted photos which show the plastic tarp enclosing the balcony area.

The landlord submits that it was left with no choice but to issue the One Month Notice as the tenant refused to comply.

The tenant submits that he has had the plastic tarp up on his balcony for more than six years. The tenant testified that the previous building manager lived on the property and took no issue with it. The tenant submits there is no term in the tenancy agreement prohibiting plastic tarp on the balcony. The tenant further submits that the landlord

provided no evidence that the plastic tarp is putting the property at risk other than a "phone call" with a fire chief. The tenant submits that the fist time the landlord raised the fire hazard issue was in the issuance of the One Month Notice.

In reply, the landlord submits that in an e-mail dated November 10, 2022 (copy submitted in evidence), the tenant was clearly advised that the breach letters were issued on the grounds that alterations are not permitted without the landlord's approval. The landlord submits the tenant was provided with the Residential Tenancy Branch Policy Guideline on alternations to the rental unit.

The tenant argues the policy guideline states changes are permitted so long as they are reverted back to the original condition upon vacating.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises provides the following guidance on page 2:

> **RENOVATIONS AND CHANGES TO RENTAL UNIT**
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> 1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
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> 2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

I do not agree with the tenant's interpretation of the above policy guideline. I find that point 1 and point 2 above are individual clauses. I agree with the landlord that any unapproved changes not explicitly agreed to should have been retuned to their original condition upon request from the landlord. As an example, if a tenant were to paint the outside of the landlord's house neon green, it would be absurd to suggest that would be okay so long as the tenant paints it back to the original color upon vacating. A neon green house would greatly affect the appearance and value of the landlord's property.

I agree with the landlord and find that the plastic tarp on the balcony would negatively affect the appearance of the property. I find the landlord was within their right to request the tenant to take down the plastic tarp upon taking over management of the property. The fact that the previous manager may not have taken issue with the plastic tarp is more a sign of poor management rather than implicit approval as argued by the tenant.

I find the landlord took reasonable steps to notify the tenant of the breach and provided the tenant with more than ample opportunity to correct the breach prior to issuing the One Month Notice. I find that the tenant's argument that the fire hazard issue was not identified until the issuance of the One Month Notice and that the landlord has not provided evidence that the property was put at significant risk is just a technicality. I find in this instance it may have been more appropriate for the landlord to issue the Notice on the grounds of a breach of the tenancy agreement. Regardless, I find it is clear from the breach notices and e-mail communication between the parties that the landlord was requesting the plastic tarp being taken down due to it negatively affecting the appearance of the building and the fact that it was an unapproved alteration in breach of the tenancy agreement. I find the tenant should have complied with the landlord's breach notices and taken down the plastic tarp.

As such, I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the tenant was not successful in this application, I make no award for the filing fee.

Conclusion

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: May 17, 2023

Residential Tenancy Branch