Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding Hooyenga Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, RP, LRE, FFT

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (the "Act") for the following orders:

1. cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
2. a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
3. an order for the landlord to make repairs to the rental unit pursuant to sections 32 and 62;
4. an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70(1);
5. authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act.

HH and RD appeared at the hearing as agents for the corporate landlord. LC (the "tenant") appeared at the hearing.

After some discussion, the landlord's agent acknowledged receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence. Similarly, the tenant acknowledged receipt of the landlord's evidence in response to their application. On that basis and pursuant to section. 71(2) of the Act I find that both parties were sufficiently served with the other's application materials.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

At the outset of the hearing, HH testified that the spelling of the corporate landlord's name is incorrect on the tenant's application. Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application to indicate the correct spelling of the corporate landlord.

The tenant applied for several orders in addition to cancellation of the One-Month Notice. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an application must be related to each other and authorizes that an Arbitrator may dismiss unrelated claims with or without leave to reapply. Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, I find the most important issue to determine is whether or not the One Month Notice should be cancelled. I find the tenant's additional claims are unrelated to this issue. I have addressed my findings regarding the tenant's additional claims below under the heading "Conclusion".

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties agreed that the tenancy commenced on November 1, 2019. Monthly rent is $1,190.00 payable on the first of each month. The Landlord collected a security deposit in the amount of $575.00 and a pet deposit in the amount of $575.00 from the tenant which the landlord continues to hold in trust.

RD testified that they served the One Month Notice on the tenant on December 27th, 2023. The One-Month Notice is submitted into evidence and indicates that it was issued because the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

HH testified that as the owner of the building they have significant concerns because the tenant is breaking building rules that are safety related. HH testified that the tenant is parking her gas-powered scooter in her rental unit. HH testified that the building does not allow barbeque cylinders for safety reasons and fire reasons and these items are not covered under the building's insurance policy. HH testified that the scooter is a safety risk and fire hazard and could cause their insurance policy to be deemed null and void in the event of an incident.

HH testified that there has been confrontation over the parking of the scooter between the tenant and RD that has become volatile. HH testified that the tenant spoke with their husband and their husband, who is also an owner of the building, was shocked at the language and behaviour of the tenant during that call. HH testified that RD was very upset by this confrontation and has submitted a description of the incident into evidence.

HH testified other tenants have provided statements indicating that they are appalled by the abusive language the tenant has used toward them and RD. HH testified that the concerns with the tenant have been ongoing, and they do not believe the tenant and RD will resolve their issues.

The tenant testified that they do not know what they are supposed to do with their scooter. They testified that they were banished from the parking lot with no place to park. The tenant indicated that they do not want their scooter in their apartment; however, they do not know what else they are supposed to do with it.

The tenant testified that they cannot keep the scooter outside because it has been stolen in the past. The tenant testified that they rely on their scooter and want to take advantage of the nice weather. The tenant submitted that the landlord left them with no alternative but to park their scooter in their rental unit. The tenant testified that they suspect they have not been afforded a parking spot in the parking lot in an effort to force them to move.

The tenant denied that their behaviour and language has impacted other tenants in the building. The tenant argued that the breakdown of their relationship with RD is a "two-way street" and alleged that RD has used abusive language toward them as well. The tenant testified that everything would be fine if RD would leave them alone. The tenant indicated that RD has left them alone for some time.

Analysis

I accept DH's testimony that they served the One Month Notice on the Tenant on December 27, 2022, by attaching it to the door of the rental unit. Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, the tenant is deemed to have received the One Month Notice on December 30, 2022.

The One Month Notice is included in the evidence. I find the One Month Notice meets the form and content requirements of section 52 of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish on a balance of probabilities, that the One Month Notice is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

After considering the relevant evidence and submissions, I find that the landlord has provided sufficient evidence to prove that the tenant seriously jeopardized the safety of another occupant or the landlord.

I find the evidence is undisputed that the tenant has and continues to park their gas-powered motor vehicle in their unit which is not only a breach of building rules but also poses a clear and imminent safety threat to other occupants of the building, specifically a fire hazard.

While the landlord presented further concerns surrounding the tenant's actions and behaviours. Having determined that the landlord met the onus which is upon them to prove that the Notice was issued for a valid reason, namely that the tenant seriously jeopardized the safety of another occupant or the landlord, I have not considered the matter further.

For this reason, I dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the 1 Month Notice dated December 27, 2022 valid, supported by the landlord's evidence, and therefore, enforceable. I therefore uphold the Notice and I order the tenancy ended on the effective date of that Notice, or February 1, 2023.

Considering the above, I find that the landlord is entitled to an Order of Possession pursuant to section 55(1)(b) of the Act, which will be effective upon two days after service on the tenant.

Conclusion

Based on the foregoing, the tenant's application pursuant to section 47 of the Act is dismissed without leave to reapply.

The tenant's additional claims are dismissed with leave to reapply.

The landlords are granted an Order of Possession which will be effective two days after service on the tenant. The Order of Possession may be filed in 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 11, 2023

Residential Tenancy Branch