

DECISION

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act
- an order for the landlord to provide services or facilities required by law under section 27 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The hearing also dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the tenants under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord A.S. was served on October 24, 2023, by registered mail in accordance with section 89(1) of the Act. The tenants provided a tracking number to confirm service.

Preliminary Matters

This hearing was effectively a continuation of an earlier tenant's application, in which the arbitrator allowed the tenants until October 18th to reapply to dispute the two notices. The tenants' current application was submitted on October 14th, meeting that deadline.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims are the applications to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and the One Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not relevant to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to sever all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy which will be decided upon.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Is the landlord entitled to recover the filing fee for his cross application from the tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on August 1st, 2017, with a current monthly rent of \$1,326.00, due on the first of each month.

This dispute arises from conflict between two groups of tenants: the applicants, who occupy a downstairs suite; and upstairs tenants, one of whom, GF, appeared as a witness on the landlord's behalf.

A 10 Day Notice was issued on July 17th, 2023 for unpaid rent in the amount of \$1,300.00. The Tenants dispute the Notice on July 18th, 2023.

The landlord KB testified to efforts to resolve conflicts between the two groups of tenants in Spring 2023 prior to issuing the One Month Notice on June 23rd, 2023. The Tenant disputed the notice on the same day, June 23rd.

The One Month Notice cited five complaints:

1. a "barrage" of text messages to the landlord from the tenants;
2. the tenants had been parking in the driveway, which was allocated to the upstairs tenants' use;

3. the tenants had been verbal abusing the upstairs tenants and visitors;
4. the tenants had been storing belongings in an area not provided for their use; and,
5. TW had attempted to conspire with the upstairs tenants to bring a joint complaint against the landlord.

KB testified that tenant TW harassed him with repeated text messages on non-urgent matters, including 48 texts in May 2023 and 29 in June 2023. Along with the One Month Notice, he also sent a letter which requested that the tenants TW and DN only text him in the event of an emergency.

Following the June 23 letter, KB testified that TW had texted him on non-emergency matters on three occasions: on July 20th, July 27th and August 7th.

KB provided as evidence a letter from GF dated July 27th describing GF's complaints about TW and DN.

KB testified that TW and DN had been parking a vehicle in the driveway, contrary to their tenancy agreement. TW testified that the vehicle in question was a motorcycle, and that the upstairs tenants had verbally agreed to allow them to have the motorcycle on the driveway.

Witness GF testified that DN had blocked the driveway on one occasion with a different vehicle but that DN moved the vehicle when requested. DN testified that there was no parking on the street due to a school event when he arrived home before GF.

GF also testified that in a backyard gathering in 2019, TW had assaulted his two sons and himself; that the police were called, and he understood TW was taken into custody.

GF testified that TW frequently engaged in arguments with him, saying that it was TW's house and threatening to have him evicted. GF further testified that TW had verbally abused three of his guests in May 2023 and sent abusive text messages to him.

TW testified that the 2019 altercation arose from a disagreement over GF and his sons keeping a bike with a "support Hell's Angels" sticker outside on the property. She testified that an argument began after GF and his sons had become drunk. She denied that she started the physical conflict and testified that she was held against the fence by GF's two sons. TW testified that while she was taken into custody by the police, she was apologised to by the police and released.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Both parties agreed that the issues surrounding the 10 Day Notice had been resolved. The landlord KB confirmed he was not attempting to enforce the 10 Day Notice.

For the above reasons, the tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is granted.

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

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states 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 the grounds for the One Month Notice.

As the tenant disputed this notice on October 14th, 2023, and since an arbitrator ordered that they had until October 18th, 2023 to do so, I find that the tenant has applied to dispute the One Month Notice within the applicable time frame. I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Evidence was submitted in relation to events following the issuance of the One Month Notice. Except where they are related to the complaints in the Notice, I have not considered events following the issuance of the Notice.

The Landlord and GF also advanced a complaint in relation to an altercation that took place in 2019. Even though this was not cited in the notice, I elected to hear evidence on this point because the event predated the Notice, was related to the two statutory categories cited on the notice, and the tenants were able to fully respond to the allegations in the hearing.

I will deal with the 2019 altercation first. Both the tenant TW and the witness GF described a physical altercation between TW and GF's sons: the two accounts vary as to what happened and who initiated the altercation. I have some doubt whether TW would have been likely to initiate a physical altercation with younger men; and as I did not judge one party more credible than the other with respect to this event, I am obliged to find that the landlord has not discharged his burden of demonstrating TW to have met the criteria in subsections 47(d)(i) and (ii) of the Act.

With respect to complaint 4, the landlord did not provide any substantiation during the hearing. In any event, barring unusual circumstances, I would not find such allegations to amount to a *significant* interference with another occupant.

Addressing complaint 5, I find this complaint does not fit within the criteria contained in subsections 47(d)(i) and (ii) of the Act. Attempting to cooperate with another tenant, even to the detriment of the landlord, neither interferes with nor disrupts the landlord nor does it affect any of the elements of subsection 47(d)(ii).

With respect to complaint 2, while it appears that parking has been a point of contention, GF conceded that any disruption to the parking was limited in scope. On one occasion, GF testified that DN had parked in a manner which blocked his vehicle,

but moved the vehicle when GF requested that it be moved. With respect to parking a motorcycle on the driveway, even assuming this is contrary to the tenancy agreement, there is no evidence before me to show this constitutes a significant interference or unreasonable disturbance to the other tenants.

In a letter dated July 27th sent to KB, GF wrote “We have had verbal threats directed to us as she would say (this is my house). I will have you evicted.... At this time we rarely go to our garage as we will be criticized as to what we are doing.... As of late they are sitting under our front window talking smack about us in attempt to start a conflict.” GF’s oral testimony repeated this evidence and characterized TW as engaging in ongoing harassment and provocation. While the tenants provided evidence that at least to some degree, the hostility between the two group of tenants was mutual and reciprocated, the question before me is whether the conduct of the applicant tenants meets the requirements of the Act, not an apportionment of blame between the two groups of tenants.

I accept GF’s evidence that TW has engaged in threatening and hostile behaviour over a period of months and I find that this constitutes an unreasonable disruption to the other tenants.

For the above reasons, the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act is dismissed.

Is the landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession. Considering the length of TW’s tenancy, I set the date for that order at January 31st, 2024.

Is either party entitled to recover the filing fee?

As the tenant was not successful in this application, the tenant's application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed, without leave to reapply.

Although the landlord was successful, the landlord’s application was made prior to the deadline set out in the earlier arbitration for the Tenants’ application and was both unnecessary and redundant. The landlord’s application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord **effective January 31st, 2024 after service of this Order on the Tenant**. Should the Tenant or anyone 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.

The tenants' application for cancellation of the landlord's One Month Notice to End Tenancy for Cause is dismissed, without leave to reapply.

The Tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is granted.

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: December 15, 2023

Residential Tenancy Branch