

DECISION

Introduction

This hearing was reconvened from a previous hearing on October 28, 2024 regarding cross applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) by the Parties.

The Tenant applied for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Landlord applied for:

- an Order of Possession based on the One Month Notice under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This decision should be read together with the interim decision dated October 28, 2024 (the Interim Decision).

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties acknowledged receipt of the Proceeding Packages and raised no concerns regarding service. I therefore found the Proceeding Packages duly served on both parties in accordance with the Act, and the hearing proceeded as scheduled.

Service of Evidence of Adjourned Hearing

In the Interim Decision, I ordered:

- The Tenant must serve any evidence he intends on referring to for the reconvened hearing upon the Landlord 12 calendar days before the reconvened hearing.
- The Landlord may serve response evidence 6 calendar days before the reconvened hearing.
- The parties must serve documents via email, using the email addresses recorded on the cover page of this decision.

The Tenant confirmed receipt of the Landlord's evidence.

Advocate for the Tenant, C.M. stated that the Tenant did not serve evidence on the Landlord. I find that, although the Tenant provided evidence to the Residential Tenancy Branch, he did not provide that evidence separately to the Landlord. I find that any consideration I make involving that evidence would be unfair to the Landlord.

For this reason, I exclude the Tenant's documentary evidence from consideration.

Preliminary Matters

Unrelated claim

At the outset of the hearing, the following issue in the Tenant's application is dismissed with leave to reapply:

- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Residential Tenancy Branch Rules of Procedure, Rule 6.2, 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 One Month Notice, I am exercising my discretion to dismiss this issue identified in the Tenant's application with leave to reapply as this matter is not related. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

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

Is the Landlord entitled to recover the filing fee for their application from the Tenant?

Background and Evidence

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

Both parties confirmed that the tenancy agreement was signed by Landlord V.K. as the landlord, and Tenant D.C. and C.J.P. as tenants on June 1, 2023, with a monthly rent of \$900.00, due on first day of the month. Tenant D.C. stated that C.J.P. was subsequently evicted by the Landlord and that he remained the sole tenant at the property.

Both parties agreed that the Landlord served and the Tenant received the One Month Notice dated August 16, 2024. The effective date on the Notice is September 30, 2024, and the reasons to end the tenancy are that:

1. Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
2. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park; and
4. Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The details of the events are:

The tenant has collected lots of garbage on the property and the property is not maintained. The landlord received 2 tickets from the City of Chilliwack (\$500.00 each) for not maintaining the property. The City said the garbage at the property is attracting bears and other wildlife. There is an abandoned car at the property with broken glass and garbage bags inside.

The tenant also has people living in the shed at the back of the property, which is only meant for storage. Even after repeated requests to have the garbage removed, the tenant did not clean the property.

The Tenant applied for dispute resolution on August 23, 2024 and continues to occupy the rental unit.

1. Allow an unreasonable number of occupants in the property

The Landlord testified that the Tenant allowed some homeless people to camp and live in the shed located at the back of the property. The Landlord said that on June 26, 2024, he received a phone call from a bylaw officer informing him that there were homeless people living in the shed.

The Tenant denied allowing homeless people living in the shed.

The Tenant testified that he did not know the homeless people and that he began noticing their presence in the back of the property while C.J.P. was still residing in the property. The Tenant said that he had informed the Landlord that C.J.P. had rented the shed out. In his testimony, he states:

The people in the back, I notified [the Landlord] that I believed there was people living up in the back several times multiple times and actually even when [C.J.P.] lived there...which he was not a friend of mine. She [C.J.P.] was taking acquaintance. I told [the Landlord] that she was renting that shed out to people and that I wanted something done about it because all the garbage that they were accumulating up back there and they did nothing about it.

2. Put the landlord's property at significant risk

The Landlord stated that there was a lot of garbage and junk in the yard which posed a significant risk to the property. He said that not only in the yard, but there were also 5 bags of garbage at the front entrance which made the front door difficult to be opened. He further stated that he arranged a cleaning company to clean up the garbage on September 9, 2024 and that a bylaw officer and RCMP were present during the clean up.

The Tenant denied collecting garbage and junk in the yard.

The Tenant testified that the garbage and junk was left by C.J.P.'s previous renters several months ago. The Tenant said that some of garbage bags at the front entrance were regular garbage belonged to him and some were from C.J.P.'s previous renters.

3. Cause extraordinary damage to the property

The Landlord stated that he believed drug users had been coming to the property and that they either got drug from the Tenant or they brought drugs from outside and came to the property to use them.

The Landlord testified that there were two fires happen at the property which were caused by the drug use and that he received a letter the fire department and the City of Chilliwack on October 24, 2024 stating the causes of the fires. In his testimony, he states:

So there were two fires recently 17th and 18th of last month. There was a fire at the back of the property on the 17th of last month and there was a huge, huge fire on the 18th of last month at the bigger shed in the at the front of the property. And as I mentioned, there was no fire when...Then the people they're coming to this whole team using drugs and they're lighting fire.(..)

There was big, big damage to the shed and I will read the letter here...So in the notes of the first fire, it says signs of homeless encampment at the rear of the

property. Most likely the cause of the fire. The fire department is stating in the notes that there is a homeless campaign at the back of the property and that was the cause of the fire...then this report, they have attached the pictures of the lighter some drug using material that people use to consume drugs, they have attached all the pictures...

[As to the fire on the 18th], it says cannot be determined because of the fire cannot be determined on the 18th. (...)

The Tenant testified that he had nothing to do with the two fires and that he called the fire department when he discovered the fire. He further testified that he believed the fires were set by the homeless people living in the backyard. In his testimony, he states:

And I was happy that [the Landlord] was finally getting rid of the garbage in the back...When finally [the Landlord] decided to do something about the garbage here and hired a crew to clean it up...there was a fire started at the house...so I called the fire department. I believe this was a retaliation because he [the Landlord] wrecked their home. Whoever these squatters were, they knocked down their shed and they started a fire at the house with me, my girlfriend and my two dogs inside sleeping like just...luckily, M.P. woke up and went to the bathroom and saw the fire from the bathroom window or we would not know that...

The next morning I went outside with my dogs to take them to the bathroom and they started like picking up at something at the back of the house. I believe someone was back there and I was saying, come out...like show yourself...you want to start fires like when I was like casting whoever was back there. And then I left to go to work and I got a call 20 minutes later that shaggy had this off and then started on fire. With all my stuff...my tools, equipment in that shed... and I lost all of that stuff. That's my home. I didn't want anything bad to happen.

4. Assign or sublet the property without landlord's written consent

The Landlord stated that the Tenant sublet the shed to the homeless people and collected rent from them.

The Tenant denied subletting the shed to the homeless people and stated that he called the Landlord when he noticed there were people living the shed. In his testimony, he states:

We didn't call the R.C.M.P. but we called the Landlord like it's his place, so I call him and say hey, like there's people I think living up here. I told him several times and I think there's people living up there and what you do about this.

The Landlord's evidence contains:

- photographs of the rental property showing garbage and items in the yard;
- a bylaw ticket issued on June 7, 2024 with the description of offence being “unsightly real property”;
- two letters dated May 27 and June 10, 2024 from the City of Chilliwack indicating an “unsightly condition” of the property

Analysis

Pursuant to Rule of Procedure 6.6, 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 Landlord has the onus of proof to establish that the One Month Notice is valid.

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 August 23, 2024, and since I have found that the One Month Notice was served to the Tenant on August 19, 2024, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that he has sufficient grounds to issue the One Month Notice.

1. Allow an unreasonable number of occupants in the property

I have reviewed the totality of the evidence submitted by the Landlord. While I accept there were homeless people squatting at the back of the property, I find that there is insufficient evidence before me to show that the Tenant invited and allowed the homeless people occupy the shed.

Thus, the Landlord has failed to prove that he has grounds to end the tenancy under section 47(1)(c) of the Act.

2. Put the landlord's property at significant risk

While I accept that before the clean up on September 9, 2024, the property was cluttered with garbage and junk in the yard and that it was in an unsightly condition as indicated in the letters and the bylaw ticket, I do not find the clutter had put the property at significant risk.

Thus, the Landlord has failed to prove that he has grounds to end the tenancy under section 47(1)(d) (iii) of the Act.

3. Cause extraordinary damage to the property

I accept that the cause of one of the fires was due to homeless encampment at the rear of the property. However, as the Landlord's evidence did not prove that the Tenant allowed the homeless people occupy the shed, I find that the Landlord has failed to prove that the fire was the result of the actions or neglect directly related to the Tenant.

Thus, the Landlord has failed to prove that he has grounds to end the tenancy under section 47(1)(f) of the Act.

4. Assign or sublet the property without landlord's written consent

As the Landlord did not provide any evidence to support the allegation that the Tenant sublet the shed to the homeless people and collected rent from them, I find the Landlord has failed to establish and prove that the Tenant has sublet the shed to the homeless people as claimed.

Thus, the Landlord has failed to prove that he has grounds to end the tenancy under section 47(1)(i) of the Act.

Based on the Landlord's documentary evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that he sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

Therefore, the Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act.

The Landlord's application for Order of Possession based on the One Month Notice under sections 47 and 55 of the Act is dismissed, without leave to reapply.

The One Month Notice of August 16, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

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

Conclusion

The Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act.

The Landlord's application for Order of Possession based on the One Month Notice under sections 47 and 55 of the Act is dismissed, without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

The One Month Notice of August 16, 2024, is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with 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: November 15, 2024

Residential Tenancy Branch