Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated February 2, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter 1 Date of Submission .Applicant's Evidence

The tenant's application was filed on February 17, 2014.

Pursuant to the Residential Tenancy Rules of Procedure, Rule 3.1, all evidence must be served by the applicant on both the respondent and the Residential Tenancy Branch. Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent *at least two (2) days before the dispute resolution proceeding*. (My emphasis)

In this instance, I find that the applicant tenant served the application and basic evidence package after filing on February 17, 2014, well before the hearing date. I find that the tenant should have endeavored to include any evidence upon which the applicant tenant intended to rely at that time.

The respondent landlord, who bears the burden of proof with respect to the validity of the 1-Month Notice, did not submit their evidence until March 24, 2014.

I find that the tenant submitted a large amount of evidence on March 31, 2014 in response to the landlord's evidence package. Although this evidence was likely available at the time the tenant made the application, it was not served on the landlord for several weeks.

There is an expectation under the Act that evidence be submitted and served as soon as possible, preferably at the time of the application, in this case on February 17, 2014

The "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "*at least*" *then the first and last days must be excluded,* and if served on a *business*, it must be served on the previous business day.

Weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

I note that section 90 of the Act provides direction for when a document is deemed to have been served, as follows:

> (a) if given or served by mail, on the 5th day after it is mailed;
>
> (b) if given or served by fax, on the 3rd day after it is faxed;
>
> (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
>
> (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.
> (my emphasis)

Although the evidence in the second package submitted by the tenant on March 31, 2014 was likely available at the time the tenant made the application, I accept that the tenant's subsequent evidence was in response to the landlord's March 24, 2014 evidence package.

I find that the landlord did receive the tenant's evidence prior to the hearing. I also find that much of the tenant's evidence consisted of copies of written communications and other documents that the landlord would likely already have seen.

Given the above, I accept all of the tenant's evidence and will consider it in the determination of the dispute before me.

Preliminary Matter 2: Monetary Claim and Request for an Order to Comply

In addition to seeking an order cancelling the One Month Notice to End Tenancy for Cause, the tenant's application also included a separate request for monetary compensation and an order to force the landlord to comply with the Act. The tenant also mentioned in the evidence, but not on the application, that he is seeking to have an unlawful rent increase rescinded.

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

In this instance, I find that the tenant's monetary claims pertain to a separate and distinct section of the Act and is not related to section 47, under which the One Month Notice to End Tenancy for Cause was issued.

Accordingly, I find that the monetary portion of this application should be severed and the monetary claim matter must be dealt with through an application under section 67 of the Act.

In regard to the portion of the tenant's application requesting an order to force the landlord to comply with the Act, I find that the issue of the One Month Notice to End Tenancy for Cause takes precedence as the continuation of the tenancy is contingent upon the determination of whether the One Month Notice will be cancelled or enforced.

Rent increases are also covered under an unrelated section of the Act.

Therefore the landlord's request for a monetary order, an order to force the landlord to comply, and the request within the evidence that the rent increase be rolled back, are all dismissed with leave to reapply.

The hearing will continue only with respect to the tenant's application to cancel the One Month Notice to End Tenancy for Cause.

Preliminary Matter 3: Effective Date of the One Month Notice for Cause

In regard to the effective date shown on the landlord's One-Month Notice to End Tenancy for Cause, I find that the landlord has indicated that the tenancy will end on March 18, 2014.

section 53(1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Subsection (2) provides that, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, that rent is payable under the tenancy agreement and that complies with the required notice period.

In the case before me, I find that the landlord issued the One-Month Notice to End Tenancy for Cause on February 2, 2014 and therefore, the end date for the tenancy cannot be effective prior to March 30, 2014.

Accordingly, the effective date of the One-Month Notice to End Tenancy for Cause is changed to April 30, 2014.

Issue(s) to be Decided

- Should the One-Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause which indicated that the landlord was ending the tenancy because the tenant had significantly interfered with and or unreasonably disturbed other occupants or the landlord.

Also submitted into evidence were copies of communications, copies of witness statements, copies of police reports, written testimony, copies of receipts and proof of service.

The tenancy began in July 2010 and the rent is $911.00. The tenant resides in the lower unit and 2 other renters occupy the upper rental unit.

The landlord testified that the One-Month Notice to End Tenancy was issued because of the tenant's disruptive conduct and unreasonable interference with the landlord and the upstairs occupants.

The landlord testified that the tenant has engaged in the following disruptive conduct:

- Has insisted that current and former renters of the unit above function in a manner to avoid making noise that should be reasonably expected in daily living.
- Repeatedly bangs on the walls bothering the residents living upstairs.
- Contacted the police to lodge frivolous complaints against the upper residents and implied that the police are monitoring these residents.
- Uses offensive language and terminology in confronting the other residents.
- Acted in a rude and disrespectful manner in dealing with the landlord and the other renters.
- Contacted the landlord at their place of employment by email, and then lodged a vexatious complaint to the landlord's employer about the landlord's use of company email and letterhead in responding..

The landlord and witness provided detailed descriptions of the above conduct and made reference to the tenant's evidence and data contained on the police reports.

The landlord testified that the current residents, with whom the tenant has taken issue, are not the first ones that the tenant felt were making excessive noise. The landlord testified that this is the 3rd set of renters who have had a conflict with the tenant. The landlord pointed out that they are at risk of losing the other current renters who are seniors with a modestly active lifestyle. The landlord pointed out that these residents have been severely traumatized by the tenant's interference with their tenancy.

The landlord's witnesses supported the landlord's testimony and stated that the tenant below has created an atmosphere in which they feel unable to enjoy daily activities within their home and have their family visit. The witness testified that the tenant has used foul language and in appropriate ethnic references in addressing them. The witness stated that they are elderly and moved to the province to be close to their family. The witnesses stated that one family member was so concerned by the tenant's aggressive conduct that they lodged a complaint with the police.

The witnesses stated that the tenant sent them an intimidating communication dated January 29, 2014, in which he alleges that the upstairs residents are being monitored by police. According to the witnesses they are fearful of the tenant.

The witnesses stated that police advised them that they are not in violation of any noise bylaws and are entitled to function normally within their suite. The witnesses testified that extra carpeting was put in the suite to minimize the transfer of noise for the benefit of the tenant, but this apparently did not solve the issue for the tenant.

The landlord submitted copies of the police records that documents police interaction with the tenant and upstairs residents. The landlord also submitted copies of letters of complaint they received from the tenant about the current residents and past occupants of the suite above his.

The landlord testified that the tenant sent them a letter dated January 31, 2014 insinuating that the landlord had called police to report the upstairs residents, when in fact the police report in question occurred solely due to concerns about the tenant's conduct.

The landlord wants the tenancy to end for cause and has requested an Order of Possession.

The tenant disputed much of the landlord's testimony and stated that the complaints he has made were justified. The tenant testified that he is being subjected to loss of quiet enjoyment, not the other way around.

The tenant stated that he contacted the landlord's employer because he felt that the landlord was trying to intimidate him by using a company letterhead and titles to respond to his complaints and to encourage him to move out.

The tenant testified that, at no time did he tell the other residents that the police were monitoring them. The tenant made reference to the communication in which he states, "*Police are also very aware of this and are monitoring this matter closely*".

The tenant testified that the tenancy relationship got off to a bad start because the landlord had not divided the utility bills appropriately and the upstairs residents were upset that they had to pay for the hydro used by the downstairs tenant.

According to the tenant, the residents know that he works at home and they purposely antagonize him by making noise in the proximity where he is located at the time. The tenant provided 35 pages of written testimony. In this material, he alleges that the 2 upstairs residents:

> "*have an approximate weight of about 425 – 450 pounds. Surprisingly, they feel that they can run, jump, scream and chase a child around on the floor directly above another party's living space and is should not cause a disturbance!* "

The tenant testified that after enduring over 3 hours of noise from the upstairs resident's party held on December 22, 2012 the tenant knocked on the wall and said, *"could you possibly make any more noise?*"

The tenant said that the voice of the male resident replied:

> *"go to hell….we can make as much noise as we want until 10 PM! (expletive! expletive! expletive!)*
>
> (Reproduced as written).

The tenant stated that they exchanged unpleasant remarks and, according to the tenant, the resident later came to his door and *"almost broke my door down with his incessant pounding*".

The tenant stated that the landlord has used the police as a means of harassing him by making vexatious complaints and leading police to believe that he was a danger to himself and others.

The tenant did acknowledge that he reported to police that one of the upstairs co-tenants:

> "*suffers from mental health issues and can be a threat to others. Her actions and behavior are not consistent with a person of sound mind*."

The tenant stated that guests of the residents have also harassed him. On one occasion a relative of the residents upstairs placed some objects on his walkway, "*presumably with intent to injure*" and also bothered the tenant by leaving her vehicle's headlamps turned on and deliberately focused on the tenant's windows.

The tenant pointed out that he has submitted evidentiary proof that he can co-exist harmoniously with others. The tenant furnished reference letters from neighbours and associates stating that he acts in a quiet and respectful manner. The tenant stated that he has been an outstanding tenant, paying rent on time and cooperating with the landlord, as evidenced by records of a previous dispute hearing the landlords had to terminate the tenancy of some former residents.

The tenant pointed out that the landlord's allegedly deceitful conduct in regard to another dispute they had in the past with former tenants who were evicted, should be considered in weighing the credibility of their testimony in the matter before me.

The tenant also submitted a detailed list of infractions of the Residential Tenancy Act that he believes have been perpetrated by the landlords.

The tenant believes that the One Month Notice to End Tenancy for Cause has no validity and should be cancelled.

Analysis – Notice to End Tenancy

The burden of proof is on the landlord to justify the reason for the Notice to End Tenancy under the Act.

It is necessary to establish whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47of the Act.

The Guideline gives examples of what may constitute "significant Interference" including serious examples of:

-unreasonable and ongoing noise;

- persecution and intimidation;

- engaging in destructive or violent behaviour

In regards to the term, "unreasonably disturbed", Black's Law Dictionary defines "unreasonable" as:

> "Irrational; foolish; unwise; absurd; preposterous; senseless;… immoderate; exorbitant; …capricious; arbitrary; confiscatory."

In this instance I find that the tenant had, by his own testimony, engaged in conduct that the other residents and the landlord found to be disruptive.

Although the tenant has repeatedly lodged complaints about the other residents with police and the landlord, I find that these complaints had little merit.

In reviewing the evidence, including copies of numerous police reports, I find that the police have been contacted by the tenant, the landlords and the residents upstairs.

I find that, in a report dated on January 30, 2014, the police observed that the rental unit is a converted home that is not soundproofed. The records show that the tenant was advised at that time by the officer that "*a better understanding of the environment should be applied.*" The officer also apparently told the tenant, *"that if he wanted to live here, (he) had to understand that he is living under the same roof as others*."

In this same report, the officer apparently reassured the upstairs residents that, ”*police are NOT watching them and they are also entitled to ‘live’ in this house.”*

(Reproduced as written).

I find that the landlord did receive numerous complaints about the tenant’s interference and disturbing behaviour towards the other residents.

I find that the fact that the house is not soundproofed and in fact conversations, pulling out of chairs, normal media sounds, hair dryers, toilet flushing, footsteps, gatherings or even conversations can be heard between the units. Along with the tenant’s apparent sensitivity to noise, I find that this has exaggerated the conflict situation between the residents upstairs and this tenant.

Although the tenant has demanded intervention by the landlord and police with respect to excessive noise, I find that the landlord is not entitled under the Act to restrict the activities of the upstairs residents to placate the lower tenant.

Under the Act, there is no basis for this landlord to take any action against the upstairs residents with respect to audible activities reported by the tenant, because the noise being generated by the upstairs occupants does not come close meeting the threshold of a violation under the Act nor pursuant to any municipal bylaws. I find that merely because sounds can be heard by another resident in the building does not necessarily mean that these sounds qualify as a “disturbance” under the Act.

Because of the carryover of sounds, I find that this tenant has been able to engage in the unseemly conduct of monitoring and reporting on normal activities of the upstairs residents. I find that the tenant has taken it upon himself to inappropriately attempt to influence these residents in their activities by banging on the walls, reporting them to police, making derogatory comments about their place of birth and mental health, sending them written messages and other similar intrusive actions that have exacerbated the situation further to the point where a presence has become routine.

I find that some of the conduct of the tenant, such as his choice to complain directly to the landlord’s employer about the use of company letterhead, his letter cautioning the upstairs residents about alleged monitoring by the police and his letter to the landlord falsely implying that they called police against the upstairs residents, appear to be tactics not aimed at resolving the problems but inflaming them.

Given the above, I find that this tenant did significantly interfere and did unreasonably disturb others, sufficient to warrant ending the tenancy under section 47of the Act. Therefore, I find that the tenant’s Application requesting that the One Month Notice to

End Tenancy for Cause be cancelled is not supported by the facts before me under the Act and the tenant's application must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order.

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application without leave. I hereby grant the landlord an Order of Possession effective two days after service on the tenant. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenant is not successful in the application to cancel the One Month Notice to End Tenancy for Cause and the landlord is granted an Order of Possession on request.

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: April 08, 2014

Residential Tenancy Branch