



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST LINE INVESTMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord's agent attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord elected to call one witness RG. The tenant acknowledged receipt of the landlord's evidence.

At the hearing, the agent made an oral request for an order of possession in the event that I find the 1 Month Notice is valid.

Preliminary Issue – Tenant's Evidence and Request for Adjournment

The agent admitted service of the notice of dispute resolution hearing and the tenant's application, but testified that he did not receive any documentary evidence in support of the tenant's application. The tenant admitted that she did not serve the landlord with her evidence. The tenant submitted that these documents should be admitted despite not being served on the landlord as these were documents that were in the possession or control of the landlord.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be received by the respondent not less than 14 days before the hearing.

In this case, the landlord has not received copies of the tenant's evidence as the tenant failed to serve the landlord. The landlord is entitled to examine the documents provided to me as

evidence. As the landlord has not been able to examine the tenant's evidence, I refuse to admit the tenant's documentary evidence as to do so would unduly prejudice to the landlord.

The tenant's documentary evidence is not admitted. I informed the tenant of this decision at the hearing.

After I informed the tenant of this decision, the tenant asked for an adjournment so that she could provide the landlord with her evidence. The agent did not consent to the adjournment stating that the current situation was "terrorizing" the other occupants of the residential property.

The Rules rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

Rule 1 of the Rules sets out the objectives:

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

I informed the tenant at the hearing that I would not adjourn the hearing and that the hearing would commence as scheduled. Although I considered all the criteria in 6.4, I declined to adjourn the hearing as this is the tenant's application, the tenant had over two months to provide evidence in support of her own application, it is through the tenant's own negligence that the adjournment was requested, it would not be efficient to postpone the hearing, and it would unfairly prejudice the landlord to reschedule the hearing.

Preliminary Issue – Exclusion of Anonymous Letter

The BC Supreme Court held in *Stelmack v Commonwealth Holding Co. Ltd*, 2013 BCSC 342 that anonymous letters may not be relied upon owing to the high standard of procedural fairness owed to tenants facing a notice to end tenancy for cause.

The landlord provided one letter in evidence that is signed "All Concerned Tenants" dated 21 September 2015. I informed the parties at the hearing that on the basis of *Stelmack*, I would exclude this letter from evidence as it was not signed by a named individual.

Issue(s) to be Decided

Should the landlord's 1 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?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 31 August 2014. The parties entered into a written tenancy agreement dated 29 July 2014. Monthly rent is \$850.00 and is due on the first.

On 7 August 2015, the landlord served the 1 Month Notice by posting that notice to the tenant's door. The 1 Month Notice set out an effective date of 30 September 2015. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or
 - put the landlord's property at significant risk.

The agent testified that the 1 Month Notice was issued because of the tenant's son's conduct. The agent testified that he had received many complaints from other occupants in the residential property. The agent testified that the tenant's son will tamper with the door so that it will not close properly by placing bottle caps in the jam. The agent testified that the police have attended at the residential property in response to complaints about the tenant's son. The agent testified that as recently as 20 August 2015 the police visited the rental unit to deal with a fight. The agent testified that, although he has no direct knowledge, he believes that the tenant's son is involved in the illegal drug trade. The agent bases this conclusion on his discussions with other occupants who have observed the tenant's son and conversations with the police. The complaints are from residents of the second floor. The agent testified that the occupants of the second floor are very active. The agent testified that occupants calling the agent to complain were specific in identifying the tenant's son as the issue. The agent testified that some residents are afraid to go out at night because of the visitors the tenant's son allows in the building either directly or through jamming the door. The agent emphasised that he does not have a problem with the tenant, but her son is a major problem.

The landlord called the witness to testify. The witness is an occupant of the second floor. The witness testified that there is constant coming and going as a result of the tenant's son. The witness testified that visitors will not visit the tenant's son like regular visitors but would visit for a

matter of minutes. The witness testified that the visitors appear to be drug users. The witness testified that he recognises the tenant's son and knows that he is the one meeting these people. The witness testified that he finds drug addicts smoking crack cocaine in the halls. He believe these addicts are there to see the tenant's son and are allowed entry by the son or by way of the tampered door. The witness testified that the visits occur between 0100 and 0400. The witness testified that the visitors will bang on the exterior door and be very loud. The witness testified that he began complaining in early August 2015. The witness testified that the police have attended more than ten times as a result of the tenant's son's visitors. The tenant elected not to cross examine the witness on his evidence.

The tenant testified that her immediate neighbour does not complain about her or her son. The tenant denied that her son is committing the acts as alleged. The tenant denied meeting with the police about her son. The tenant admitted receiving the letter dated 30 July 2015 from the prior landlord warning the tenant that a 1 Month Notice would be issued if she did not ensure that persons she permits on the residential property stopped propping open the door. The tenant admits that sometimes there is yelling from her apartment, but denied that there were ever physical fights. The tenant denied that anyone was ever injured. The tenant submits that the landlord and tenants are coordinating to remove her from the rental unit so that the landlord can rerent the unit at a higher monthly rent.

I was provided with a letter dated 30 July 2015 from the prior property management company to the tenant. That letter warns the tenant that if tenant does not stop tampering with the door than a 1 Month Notice would be issued.

An occupant KF provided a written complaint letter dated 27 September 2015. The letter set out that the tenant's son brings unsavoury people into the building that KF believes to be drug addicts. KP writes that the guests will yell in the parking lot disturbing her children's sleep. KP describes the activity as "nonstop". KP writes that she fears for the safety of her children.

KP wrote to the landlord on 30 September, 2015. KP wrote that the issues with the tenant's son had gone on for the last six months. In particular KP sets out that the tenant's son has visitors all day and night and that the tenant's son jams the rear door lock to allow in visitors.

I was provided from a letter from another occupant in unit 203. That occupant notes that the exit door is blocked to stay open and that visitors from the rental unit yell and swear in the hallways and around the building.

The landlord provided me with a log of telephone complaints received by the agent regarding the rental unit dated 19 June 2015 to 26 September 2015. There are seventeen entries, ten of which occurred before the issuance of the 1 Month Notice:

Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The landlord has set out in his 1 Month Notice, among other reasons, that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

In this case, the landlord has provided sworn and corroborated testimony that the tenant's son is jamming the door lock mechanism and allowing entry into the residential property by criminal non occupants thus seriously jeopardizing the health or safety or lawful right or interest of the other occupants in the building. In particular, the jammed lock mechanisms or direct entry permitted by the tenant's son is allowing non occupants, observed to be drug users, to enter the halls to sleep and take drugs in the hallways. The other occupants of the residential property have made multiple complaints about the son's interference with the door mechanism and direct entry of the criminal non occupants and both provided written statements and sworn testimony. The other occupants are very concerned for their safety.

The tenant provided a blanked denial of the allegations made against her son. The tenant did not challenge the witness's evidence on cross examination although this was available to her. The tenant alleges that the landlord is seeking to end the tenancy so that it may raise the rent. The tenant has not provided any support for this allegation. The landlord's evidence is corroborated by the agent's and witness's testimonies, written statements of two tenants, and the business records of the agent. On balance, I find the landlord's evidence more credible as it is corroborated and more plausible.

I find, on a balance of probabilities, that by interfering with the locking mechanism and directly permitting entry by criminal non occupants the son (a person permitted on the residential property by the tenant) has seriously jeopardized the safety and interests of the other occupants. As the landlord has substantiated the notice on this basis, I need not consider the other grounds for cause set out in the 1 Month Notice.

The 1 Month Notice is valid. The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply. Where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession (Act, s. 55). As the tenant's application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession. The tenant has paid for her use and occupancy of the rental unit for the month of October. The landlord is entitled to possession of the rental unit on 31 October 2015.

As the tenant has been unsuccessful in her application she is not entitled to recover her filing fee for this application.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is provided with a formal copy of an order of possession effective 31 October 2015. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: October 23, 2015

Residential Tenancy Branch

