



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for Cause pursuant to section 55 and recovery of the filing fee for their application. The tenant applied to cancel the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's 1 Month Notice on July 29, 2015. The landlord and tenant both confirmed receipt of the other party's Application for Dispute Resolution package. The landlord testified that she only received the materials from the tenant the morning of this hearing but that she was prepared to proceed with this hearing.

I note that the writer of an interim decision from the Residential Tenancy Branch ("RTB") with respect to these applications issued on December 3, 2015 requested that the tenant's advocate ensure all the documentary evidence submitted by the tenant be delivered to the landlord as soon as possible.

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 landlord entitled to recover the cost of their filing fee from the tenant?

Background and Evidence

Landlord SL gave evidence that the residential tenancy agreement began on January 26, 2012. The rental amount for this unit was established at \$850.00. Landlord SL testified that she continued to hold the \$425.00 security deposit that the tenant paid on January 26, 2012.

The landlord has applied for an Order of Possession for Cause relying on two grounds; That a Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and/or
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Prior decisions of the RTB were submitted by the landlord as evidence for this hearing. In one prior decision dated July 30, 2015, an arbitrator cancelled the landlord's previously issued 1 Month Notice. The arbitrator/writer of that decision wrote that both parties agreed that the landlord should be taking measures to address pest control concerns in this unit. Therefore, the arbitrator provided the following instruction to the parties,

I order the tenant to allow the landlord and the landlord's pest control provider to access the rental unit to inspect and if necessary treat the rental unit for pests (including mice and bedbugs) upon the landlord providing the tenant with 24 hours written notice posted on the tenant's door or handed to the tenant. I also order the tenant to comply with whatever reasonable instructions are provided by the landlord's pest control technicians to ensure that the pest control treatment has the optimal chance for success.

Landlord SL and Landlord SW both testified that the tenant has denied the landlord access to her rental unit in accordance with the previous RTB decision. The landlord also testified that the tenant's behaviour has escalated so that she has allegedly assaulted Landlord SW. As well, Landlord SL testified that the pest control issues within the tenant's unit have led to pest control issues in the neighbouring rental units. One of the tenants of a neighbouring unit (Tenant MY) testified that she lives in a unit next door to the tenant and has struggled with a pest control issue within her unit, regardless of many treatments, cooperation with the landlords and efforts to ensure her unit is clean.

Landlord SL and Landlord SW both testified that the tenant has been offered assistance on several occasions and has not accepted it. The landlord provided documentary materials to support this testimony. Letters from the landlord to the tenant were filed for

this hearing referencing the landlord's offers for assistance in clean-up of her unit as well as refusal by the tenant to take advantage of these offers.

The landlord issued a 1 Month Notice to End Tenancy. Landlord SL testified that the tenant continued to obstruct access to the rental unit after the issuance of the previous RTB decision that required her to allow access to the landlords and their pest control technicians. The landlord's pest control technician (Witness ER) testified that he had attended to the tenant's unit on numerous occasions and that only once had he been allowed into the unit. He provided sworn testimony that the unit was so full of the tenant's belongings that it was impossible to properly evaluate any pest control concerns in the rental unit.

Landlord SL testified that she was harmed in attempting to inspect the tenant's rental unit on the last attempt prior to the issuance of the 1 Month Notice (on July 29, 2015). Landlord SL testified that she attended to the suite after the landlord had issued a 24 hour notice to the tenant for an inspection. Landlord SL testified that, on attending to the tenant's unit, she and her pest control technician were refused entry into the unit. She testified that the tenant approached her in the hallway and that the tenant yelled, screamed profanities at her. She testified that her arm was in the door of the tenant's unit. She testified that the tenant closed the door forcefully while her arm was still inside. She testified that while the police attended, no charges were laid as a result of this matter.

The pest control technician (Witness ER) testified independently to the same set of facts surrounding the incident where Landlord SL was allegedly assaulted. He testified that he witnessed the tenant slam her door on Landlord SL's arm when she attempted to hold the door to continue discussing the scheduled inspection with the tenant. Witness MY also testified that she had some knowledge of this incident. She testified that she did not leave her residence to visually witness any altercation but that, on July 29, 2015, she heard screaming and yelling. She testified that she identified the voice of her neighbour, the tenant in this proceeding, as the person yelling.

The tenant did not deny that she refused entry to the landlord on this occasion (July 29, 2015) as well as on previous dates. She testified that she wasn't "up to having someone in her unit that day" as she had been in the hospital on July 27, 2015. She did not deny receipt of the preceding 24 hour notice to enter the unit. She did not deny that the unit requires pest control treatment. Her advocate submitted that an assisting organization has been providing pest control services and that the landlords can be satisfied that any pest control issue is currently being addressed. The tenant also testified that the services she was offered for assistance with clean-up required a fee that she could not

afford to pay. Landlord SL and Landlord SW provided details of the offers for assistance that contradicted this claim.

Witness ER, pest control technician provided evidence of his experience in pest control. He testified to ongoing care and knowledge of the residential building as well as the tenant's unit. He advised that he has dealt with the tenant on several occasions. He also testified that, in his estimation, the tenant's unit was one of two units that were causing pest control problems within the building.

Witness MY testified that she could not open her balcony in the summer because of the mice coming into the unit from the patio. She testified that, even keeping her patio doors locked and with ongoing treatments, she has been unable to completely rid herself of mice within her unit. She testified that she has sympathy for her neighbour but that the tenant is causing difficulties for herself, her neighbours and the landlords.

The tenant's advocate stated that the tenant is an 81 year old woman with some challenges, including a hearing impairment. He submitted that she has difficulty in communicating. He submitted that she is working to get her unit "back in order". He submitted that there is no documentation from the police of threats or an assault by the tenant. He submitted that there is no clear evidence that the tenant is putting anyone in "jeopardy".

Landlord SL stated that these issues arose when the tenant complained to the landlords about pest issues (mice) in her rental unit. Landlord SL, supported by the testimony of Witness ER, gave evidence that the tenant had been provided with mice traps on several occasions. Landlord SL testified that the neighbours continue to see mice in and around the rental unit, including the tenant's patio. Witness MY testified that she has seen mice on the tenant's patio and that she has had issues with mice in her suite since she moved in next door approximately one year ago.

Landlord SW testified that, in entering the tenant's rental unit on previous occasions, she has seen live bedbugs in the unit (on the bed, under the mattress). She also testified that there are so many items within the rental unit, it is difficult to thoroughly assess the unit regarding pest issues.

Landlord SL submitted that the landlord has the right to inspect the rental unit and be allowed access to the unit with reasonable notice. Landlord SL also submitted that the landlord has a right to choose the pest control technician to work on the premises. Landlord SL submitted that it is not satisfactory that the tenant may have enlisted pest

control services of her own. She submitted that any steps by the tenant are not in accordance with the *Act* or in compliance with the previous RTB decision.

The landlord also sought to recover the filing fee for this application.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to prove that notice is justified. The landlord provided a 1 Month Notice based on the following grounds;

- *Tenant ... has significantly interfered with or unreasonably disturbed another occupant or the landlord or that*
- *The tenant ... seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

I accept the landlord's documentary evidence that the tenant had been given notice requesting and advising of the need to enter her rental unit in compliance with the *Act* on several occasions including July 29, 2015 after the issuance of a decision by the RTB ordering that the tenant allow the landlord access to the unit. I find the landlord supplied testimonial and witness evidence that these notices have been issued by the landlord in strict compliance with the *Act* and that the tenant has repeatedly failed to comply with past notices. The undisputed evidence at this hearing is that the tenant failed to comply with the most recent notice by the landlord to gain entry to the rental unit on July 29, 2015. The tenant failed to comply with this most recent notice despite an order of an RTB arbitrator that she comply with the landlord's requests to enter her unit and allow inspection and any required treatment for pests to occur.

The landlord also submitted undisputed evidence, supported by witness testimony that the tenant closed her rental unit door on the arm of Landlord SW. At minimum, I find that the tenant has on this and on other occasions caused a noise disturbance to the landlord and other occupants of the residential premises.

I find that the all of the circumstances surrounding the tenant's decision to deny access to the rental unit after the RTB decision and on prior dates constitutes significant interference and unreasonable disturbance to both other occupants and the landlord. Unlike the previous RTB hearing where the arbitrator took into account that the tenant's actions had constituted an isolated incident, the tenant's actions now constitute an ongoing pattern of disruptive behaviour.

Section 32 of the *Act* provides that a landlord must maintain the residential property to ensure health, safety and legal standards are met for all tenants. Residential Tenancy Policy Guideline No. 1 confirms that a landlord is responsible for major projects, such as tree cutting, pruning and insect control.

Further to that responsibility, Policy Guideline No. 7 states that a landlord must not enter a rental unit unless; there is an emergency; the tenant gives permission; the landlord gives a minimum of 24 hours and a maximum of 30 day's notice; the tenant has abandoned the unit; or the landlord has an arbitrator's order authorizing entry. Notices to enter the rental unit must give a date and time as well as a reasonable purpose. In this case, the landlord's evidence is that 24 to 48 hour's notice was always provided to the tenant. The tenant did not dispute that she had received notice on July 29, 2015 or on previous occasions. She also acknowledged knowledge of the previous decision of the RTB arbitrator.

Policy guideline no. 7 addressing access to units by the landlord and tenant states that,

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. ...

As did the previous RTB arbitrator, I find that the landlord's purpose for entry to the unit was a reasonable one. I find that the tenant had requested assistance with a pest control issue, had been served with sufficient notice to enter the rental unit and prevented the landlord from entering the rental unit.

Based on all of the evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. I find that the tenant's actions constitute significant interference and unreasonable disturbance to both other occupants and the landlord. I find that the tenant's actions also seriously jeopardized the safety or lawful right of another occupant or the landlord, particularly another occupant's right to be free from pests and the landlord's right to enter the unit when required.

I dismiss the tenant's application pursuant to section 47(4) of the *Act* to cancel the landlord's notice to end tenancy. As the tenant has failed in her application, I find that the notice to end tenancy is valid and that the landlord is entitled to an Order of Possession.

As the landlord was successful in their application, I find the landlord is entitled to recover the filing fee for their application. I allow the landlord to deduct the \$50.00 filing fee from the tenant's security deposit.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective January 1, 2016. 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.

I allow the landlord to retain \$50.00 from the tenant's \$425.00 security deposit. The remainder of the tenant's security deposit \$375.00 will be dealt with in compliance with the *Residential Tenancy 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 *Residential Tenancy Act*.

Dated: December 18, 2015

Residential Tenancy Branch

