Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EPARCHY OF NEW WESTMINSTER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, MND, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

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

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on January 22, 2018. The tenant stated that he served the landlord with the notice of hearing package by placing it in the mailbox on January 11, 2018. The landlord argued that he did not receive the tenant's notice of hearing package. The tenant argued that that it was served in this manner, but was unable to provide any supporting evidence of service. I accept the affirmed testimony of both parties and find that that tenant was properly served with the notice of hearing package via Canada Post Registered Mail on January 22, 2018. On the tenant's notice of hearing package, I find that the tenant has failed to properly serve the landlord as per

sections 88 and 89 of the Act. The landlord argued that no notice of hearing package was received from the tenant, but the tenant had argued that it was placed in the landlord's mailbox. The tenant was unable to provide any supporting evidence of service. As such, I find that the tenant has failed to properly serve the landlord and the tenant's application for dispute is dismissed.

Preliminary Issue(s)

At the outset it was clarified with both parties that named landlord by the tenant and the landlord's name were different; tenant's address and the one provided by the landlord were different. Both parties clarified the proper named landlord and the proper rental address and the style of cause and the details of this file shall be amended to reflect these changes.

During the hearing it was clarified with both parties that the landlord's monetary claim is limited to the amount filed of $1,777.15. The landlord confirmed that they had failed to make, file and serve an amendment to the application for dispute resolution as per the Rules of Procedure(s) increasing it to $7,144.22 as per a submitted copy of the landlord's monetary worksheet within the landlord's documentary evidence.

The hearing proceeded on the landlord's application only.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?
Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

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 respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 27, 2017 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated August 28, 2017. The monthly rent is $950.00 payable on the 1st day of each month. A security deposit of $475.00 was paid.

Both parties confirmed that on December 31, 2017, the landlord served the tenant with the 1 Month Notice dated December 31, 2017. The 1 Month Notice form used by the landlord (RTB:005 (Oct/00) which has been since replaced with #RTB-33(2016/12). The 1 Month Notice sets out an effective end of tenancy date of January 31, 2018 and that it was being given as:

> *Upon interview with T. re:rental I stated that the suite was a non smoking area as of a month ago there has been a continual strong smell of marijuana into the common area and my front entrance. This has been arresting my health and disturbing my reasonable enjoyment of my living quarters. See attached addendum for further details.*

Selected on the notice:

A)

conduct of the tenant or a person permitted in or on the residential property or residential premises by the tenant, is such that the enjoyment of other occupants in the residential property is unreasonably disturbed.

F)

the safety or other lawful right or interest of the landlord or other occupant in the residential property has been seriously impaired by an act or omission of the tenant or a person permitted in or on the residential property or residential premises by the tenant.

It was clarified with both parties that the 1 Month Notice form used by the landlord was outdated such as the sections provided under the Act for the notice to end tenancy, but that the substance of the 1 Month Notice was valid.

Both parties confirmed that there were no additional written terms added to the tenancy agreement regarding “no smoking”.

The landlord provided affirmed testimony that a verbal agreement was made at the beginning of the tenancy that there was to be no smoking. The tenant disputes this claim. The landlord stated that as it was a verbal agreement there is no supporting evidence of this claim.

The landlord seeks an order of possession as a result of a 1 Month Notice issued for Cause dated December 31, 2017. The landlord also seeks a monetary claim of $1,777.15 which consists of:

$1,777.15 Estimated Cost of Replacing the Carpet in the future

The landlord claims that the carpet may need to be replaced due to the marijuana smoke. The landlord relies upon a quote for $1,777.15 dated July 17, 2017 for the replacement of the carpet. The landlord stated that they are unsure of the condition of the carpet and will not know until a condition inspection report for the move-out can be completed at the end of tenancy and a finding made that the carpet cannot be cleaned and needed to be replaced.

Analysis

In an application to cancel 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.

In this case both parties have confirmed that the landlord served the tenant with a 1 Month Notice dated December 31, 2017. The landlord clarified that he seeks an end to the tenancy due to a breach in a verbal no smoking agreement made at the beginning of the tenancy. The tenant has disputed that a no smoking condition was agreed to. I find upon the conflicting and contradictory evidence of both parties that the landlord has failed to provide sufficient evidence that a no smoking condition was agreed to. As such, the landlord's request to uphold the 1 Month Notice dated December 31, 2017 is dismissed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord has provided undisputed affirmed testimony that no loss has yet resulted as an inspection of the rental unit carpet has not yet occurred. The landlord has also confirmed that no expenses have been incurred for replacing the carpet. As such, I find that the landlord's claim is pre-mature as there has been no assessment on whether the carpet is un-cleanable or that the carpet is required to be replaced. The landlord's monetary claim is dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed.
The landlord's application is dismissed.

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: March 08, 2018

Residential Tenancy Branch