Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OT

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking cancellation of a One Month Notice to End Tenancy for Cause (the "One Month Notice"), recovery of the filing fee, and other matters.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application or the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

Preliminary Matter #1

Although the Landlord confirmed receipt of the Tenant's documentary evidence, she stated that she did not have time to serve the Tenant with a copy of the witness statement in the documentary evidence before me. Further to this, she stated that while the remainder of her documentary evidence was not served on the Tenant specifically in

relation to this hearing, it was served on him during the tenancy and has been submitted by him in relation to this hearing.

The ability to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. As the Landlord acknowledged that she did not serve the witness statement in the documentary evidence before me on the Tenant, I find that he therefore did not have awareness of it or an opportunity to respond. As a result, I find that it would be a breach of both the principles of natural justice and the Rules of Procedure to accept this evidence for consideration in this matter. As a result, this documentary evidence has been excluded from consideration.

While the Landlord acknowledged that she did not serve the remainder of her documentary evidence on the Tenant, she stated that he himself has submitted copies of this evidence for consideration in the hearing. As a result, I have accepted for consideration in this matter all documentary evidence submitted by the Landlord which has also been submitted by the Tenant in his own evidence.

Preliminary Matter #2

In the Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. I therefore exercise my discretion to dismiss the Tenant's other claim relating to repair and maintenance of the rental unit and property with leave to reapply.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the Tenant originally moved into the lower portion of the property in 2012, and that in approximately November of 2016, he entered into a new tenancy agreement to rent the upper portion of the property instead. Both parties agreed that rent is currently $1,088.00 and due on the first day of the month. Although the hearing occurred on October 1, 2018, at 11:00 A.M., the parties agreed that rent for October had not yet been paid.

Both parties were in agreement that the Tenant has had a trampoline on the property for some time and the Landlord testified that when renewing her home insurance, the insurer required her to complete a new questionnaire specifically asking if there was a trampoline on the property. The Landlord advised the insurance provider that there was and stated that she subsequently received a letter from the insurance provider, a copy of which is before me in the documentary evidence from the Tenant, stating that the trampoline must be removed from the property within 30 days of April 8, 2018, or the insurance would be cancelled. The letter also stated that should the insurance be cancelled, the Landlord would be required to report the cancellation to future insurance providers and may therefore have difficulty obtaining insurance in the future.

The Landlord stated that she served a copy of this letter on the Tenant on April 9, 2018, with a request that the Trampoline be removed from the property by May 7, 2018, and the Tenant confirmed receipt. The Tenant stated that he did not have the tools to disassemble the trampoline at the time; so as a result, the trampoline was leaned up against the fence on approximately May 5, 2018. The Tenant stated that the Landlord found this sufficient at the time and took photos to send to the insurance provider. The Tenant stated that the trampoline remained assembled and leaned against the fence without further action or complaint from the Landlord until they had an argument on

August 1, 2018, regarding a rodent problem in the shed. The Tenant stated that the Landlord then served him with the One Month Notice on August 2, 2018.

The One Month Notice in the documentary evidence before me, dated August 1, 2018, has an effective date of August 31, 2018, and states that it was posted to the door of the Tenant's rental unit on August 2, 2018. The One Month Notice states that the reason for ending the tenancy is because the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

The Landlord stated that despite her request that the Tenant remove the trampoline from the property in compliance with her written request to do so and her insurance provider's letter, the Tenant failed to do so. The Landlord stated that she provided the Tenant with ample time to remove it and that his failure to do so left her with no choice but to serve the One Month Notice as she cannot legally remove the trampoline herself and she is currently in breach of her insurance policy. The Landlord stated that presence of the trampoline on the property means that her insurance provider may decline to grant any claims leaving her, the property, and the other occupants of the property at risk should damage to the property occur. Further to this the Landlord stated that the roof has developed a leak which she cannot deal with as she is worried the insurance provider will want to inspect the property prior to granting any claim for repairs in order to verify that the trampoline has in fact been removed from the property as required.

The Tenant testified that the trampoline was disassembled at the end of August after the Landlord complied with his request to deal with a rodent problem in the shed and that it is currently stored in the garage. As a result, the Tenant argued that it poses no risk to the Landlord or her property. The Landlord reiterated that until the trampoline is removed from the property, she remains in breach of her insurance policy which places the property at risk as she has no coverage for damage or major events such as flooding, an earthquake, or fire. The Landlord also stated that the Tenant clearly does not understand the jeopardy his failure to comply with the request to remove the trampoline has placed her property in.

Further to this, the Landlord stated that the Tenants in the lower unit have advised her that the Trampoline was taken down off the fence and used on more than one occasion after May 7, 2018, placing the property at even further risk and reiterating the Tenant's

lack of understanding about the jeopardy he is placing her property in. The Tenant acknowledged that the Trampoline was in fact used once by his daughter after May 7, 2018, but stated it has not been used since.

Despite the foregoing, the Tenant also argued that the One Month Notice has not been served in good faith as the Landlord simply does not like him and wants to obtain more money in rent. He argued that this is clear by the fact that the Landlord did not take issue with his placement of the trampoline against the fence rather than its removal from the property until after they had a disagreement on August 1, 2018, regarding the rodent issue in the shed. The Landlord acknowledged that there has been an ongoing issue with regards to the shed but denied that it is in any way related to the service of the One Month Notice and that in any event, the shed and the rodent issue have been dealt with by her as confirmed by the Tenant in the hearing. The Landlord stated that she believed that the trampoline had been removed as she does not live at the property and that when she received reports from the other tenants of the property stating it was still present and in use, she had no option but to serve the One Month Notice. The Landlord also stated that what the Tenant currently pays for rent is very competitive and therefore she likely could get little if anything more for the rental unit if it were re-rented to another tenant.

Analysis

Based on the evidence and testimony before me for consideration, I find that the Tenant was served with the One Month Notice on August 2, 2018.

Section 47 of the *Act* states that a Landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

Although both parties provided significant testimony for my consideration, ultimately the Tenant acknowledged receiving the letter from the insurance company and the Landlord’s request to have the trampoline removed from the property by May 7, 2018. A copy of the letter from the insurance provider is in the documentary evidence before me and clearly states that the trampoline must be removed from the property by May 7, 2018, or the Landlord’s insurance policy will be cancelled. The Letter also states that if the policy is cancelled, the Landlord will likely have difficulty obtaining insurance in the future from any other insurance provider. Although the Tenant provided reasons for why the trampoline was not removed by May 7, 2018, ultimately he acknowledged

that it still remains on the property, albeit disassembled and in the garage, and that it was in fact used on at least one occasion after the May 7, 2018, deadline.

While I appreciate the Tenant's position that the trampoline is currently disassembled and in the garage and therefore no risk to the property, the letter from the insurance provider clearly states that the trampoline must be removed entirely from the property and that insurance coverage will be cancelled if it is not. Although the Tenant has argued that the trampoline poses no risk in its current location, I do not agree. The letter from the insurer clearly states that the insurance policy will be cancelled if the trampoline is not removed from the property within 30 days of April 8, 2018, and as a result, I find that the Tenant's failure to remove the trampoline from the property as requested has indeed put the Landlord's property at significant risk due to lack of insurance coverage.

Although the Tenant alleged that the One Month Notice has been served because the Landlord simply wishes to end the tenancy, the Landlord denied this allegation and the documentary evidence and testimony before me overwhelmingly supports a finding that the One Month Notice has been validly issued in good faith as the Tenant has failed to remove the trampoline from the property as required, despite being given notice and a significant amount of time in which to do so.

Based on the above, I find that the Landlord has satisfied me, on a balance of probabilities, that they had cause to serve the One Month Notice pursuant to section 47 of the *Act* and I therefore dismiss the Tenant's Application seeking cancellation of the One Month notice without leave to reapply.

Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the One Month Notice is signed and dated by the Landlord, contains the address for the rental unit and the effective date of the notice, states the grounds for ending the tenancy and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

Although the effective date of the One Month Notice is August 31, 2018, I find that this date does not comply with the minimum notice period stated under section 47(2) of the *Act*. As a result, the effective date has been automatically corrected to September 30, 2018, pursuant to section 53 of the *Act*. As the effective date of the One Month Notice has passed and at the time of the hearing the parties confirmed that rent for October had not been paid, the Order of Possession will therefore be effective **two**

days after service on the Tenant. In the event that rent has now been paid for October, the Landlord remains at liberty to serve and enforce the two day Order of Possession as written or to serve the Order of Possession and wait to enforce it until October 31, 2018, at 1:00 P.M. In the event that the Landlord chooses to serve and enforce the two day Order of Possession as written, the Landlord should refund the Tenant the balance of rent paid for October for any days after which the Tenant has vacated the rental unit. The Landlord remains at liberty to file a subsequent Application with the Residential Tenancy Branch (the "Branch"), should they wish to do so, for any loss of rent suffered after the end of the tenancy or for per diem rent on a daily basis for the period in which the Tenant resides in the rental unit in October or thereafter if rent for that period has not been paid.

As the Tenant was unsuccessful in their Application, I decline to grant recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: October 3, 2018

Residential Tenancy Branch