



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 330127 BC LTD PARKWOOD MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, ERP, PSF, LRE, AAT, OLC

Introduction

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

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47;
- an Order for emergency repairs, pursuant to section 62;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order to allow access for the tenant or their guests, pursuant to section 30; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;

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

- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant's agent testified that she did not know when the landlord was served with the tenant's notice of dispute resolution package. The landlord testified that she received the tenant's notice of dispute resolution package in person on October 24, 2018. I find that the landlord was served with this package on October 24, 2018, in accordance with section 89 of the *Act*.

The tenant's agent testified that she did not know when the tenant served the landlord with the tenant's first or second amendment packages. The landlord testified that she received the tenant's first amendment package in person on November 1, 2018 and that she received the tenant's second amendment package in person on November 13, 2018. The tenant's agent testified that she had no reason to disbelieve the dates provided by the landlord.

I find that service of the tenant's first amendment package was effected on the landlord on November 1, 2018, in accordance with sections 88 and 89 of the *Act*. I find that service of the tenant's second amendment package was effected on the landlord on November 13, 2018, in accordance with sections 88 and 89 of the *Act*.

The landlord testified that she personally served the tenant with the notice of dispute resolution package on November 7, 2018. The tenant's agent testified that she did not know on what date the tenant received the landlord's notice of dispute resolution package. The tenant's agent testified that she had no reason to disbelieve the date provided by the landlord. I find that the tenant was served with this package on November 7, 2018, in accordance with section 89 of the *Act*.

Preliminary Issue- Amendments

The tenant's application for dispute resolution states the landlord's business contact as the landlord. The landlord's application lists the correct name of the landlord. Pursuant to section 64 of the *Act*, I amend the tenant's application to list the correct landlord.

The tenant's application for dispute resolution lists the tenant's agent as a tenant. The tenant's agent testified that she is not a tenant. Pursuant to section 64 of the *Act*, I amend the tenant's application to list only tenant L.W. as a tenant.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notices to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to any

of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notices. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?
3. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy is currently ongoing and monthly rent in the amount of \$766.50 is payable by the second day of each month. A security deposit of \$375.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenancy agreements states in part: "I further agree that no person or persons other than the applicant and members of his family as listed above will occupy the premises." The tenant is the only tenant listed on the tenancy agreement.

The landlord testified that the tenant's agent and her partner were tenants in the subject rental building and that they were evicted as of August 31, 2018. The landlord testified

that the tenant's agent and her partner moved out of their unit and into the tenant's subject rental property.

The landlord testified that on September 7, 2018 she served the tenant with a 10 Day Notice which requested that the tenant remove the tenant's agent and partner from the subject rental property "or further legal action [would] be taken." The Letter dated September 7, 2018 was entered into evidence.

The landlord testified that the tenant's agent and her partner did not leave the subject rental property and so on October 11, 2018 she personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of November 11, 2018 (the "First One Month Notice"). The tenant confirmed receipt of the First One Month Notice on October 11, 2018.

The First One Month Notice stated the following reason for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.

The landlord testified that on September 26, 2018 she personally served the tenant with 48 hours notice to enter the subject rental property on September 28, 2018 to determine if the tenant's agent was residing at the subject rental property.

Both parties agreed that on September 28, 2018 the landlord knocked on the door to the subject rental property and the tenant permitted the landlord and her husband to enter the subject rental property. The landlord testified that two of the tenant's three bedrooms were piled high with possessions making it impossible to enter the rooms. The landlord testified that the tenant smokes and that the accumulation of materials in the bedrooms constitutes a fire hazard. Photographs of the two bedrooms were entered into evidence. The tenant confirmed that the photographs entered into evidence were photographs of the subject rental property taken on September 28, 2018.

The landlord testified that she contacted the fire department and they referred her to the Health Authorities and that nothing came of her concerns.

The landlord testified that the third bedroom had photographs of the tenant's agent and the tenant's agent's family and other items belonging to the tenant's agent. The landlord testified that she asked the tenant where she sleeps, and she said the couch.

The landlord's agent testified that she does not live at the subject rental property but that she is there all the time as her mother and friends reside in the subject rental building and because she helps the tenant with her daily needs. I asked the tenant's

agent what her current address is and she did not know. The tenant's agent testified that she would need to look it up in her address book, a few minutes later, the tenant provided me with her current address.

The landlord testified that on October 25, 2018 she personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of November 30, 2018 (the "Second One Month Notice"). The tenant confirmed receipt of the Second One Month Notice on October 25, 2018.

The Second One Month Notice stated the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The landlord testified that on October 21, 2018 the tenant complained of a plugged kitchen sink and a broken door and so the building manager and the handyman attended at the subject rental property to complete the repairs. The landlord testified that both the handyman and the building manager were permitted inside the subject rental property by the tenant. The landlord testified that the tenant's agent was at the subject rental property at that time. The landlord testified that while the handyman was completing repairs to the door, the tenant's agent assaulted the handyman.

The landlord entered into evidence a signed letter from the handyman which stated that:

"While working on repairing the door at 4:00 PM the guest of the tenant was attempting to bring company into the place where I was working. She started yelling at me to get out of the way....

I acknowledged that I would leave so long as I could collect my tools. She then pushed me out of the doorway into the common area of the building. She raised a fist towards me but did not strike seeing as other tenants were coming out into the common areas to see what the commotion was about. She than [sic] began to kick my tools out of the door way, as well as any parts belonging to the property of the building. In doing so she kicked by hand as well, which was when I phoned in a report to the police as I had now been assaulted.

After dealing with the police who asked her to leave the building which she did the manager and I went back upstairs to finish fixing the door. We were

welcomed in by the tenant in order to finish the job as that is considered an emergency repair and required by the act.”

The landlord entered into evidence a signed letter from the building manager which corroborates the handyman’s version of events.

The tenant’s agent testified that she yelled at the handyman and asked him to leave when he poured acid down the sink to dispel the clog as this had a negative affect on the tenant’s breathing. The tenant’s agent testified that she did not push the handyman or kick him but that she did push his tools into the hallway. The tenant’s agent testified that the police asked her to leave the subject rental property but that no charges were laid.

The landlord testified that on August 16, 2018 she stopped a large moving van from unloading an unauthorized person’s possessions into the tenant’s agent’s rental property. The tenant’s agent testified that this did occur but that she did not give permission for her friend to bring her belongings to her rental property.

Analysis

Upon review of the First One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*. Based on the testimony of both parties, and the evidence submitted, I find that service of the First One Month Notice was effected on the tenant on October 11, 2018.

Upon review of the Second One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*. Based on the testimony of both parties, and the evidence submitted, I find that service of the Second One Month Notice was effected on the tenant on October 25, 2018.

Section 47(1)(d)(i) 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 significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases

such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case, the handyman's written statement as to the events of October 21, 2018 are in harmony with written statement of the building manager. That is to say that both witnesses independently provided their recollection of the event in question and those recollections were consistent with each other. It is the recollection of the tenant's agent which is inconsistent with the written statements entered into evidence. I therefore accept the handyman's version of facts over that of the tenant's agent.

Based on the written statements of the handyman and the building manager, I find that on October 21, the tenant's agent pushed and kicked the handyman. I find that the tenant's agent was allowed on the subject rental property by the tenant. I find that the above actions of the tenant's agent on October 21, 2018 breached section 47(1)(d)(i) of the *Act*. I therefore find that the landlord was entitled to end the tenancy pursuant to section 47(1)(d)(i) of the *Act*. The landlord is entitled to receive an Order of Possession for the effective date of the Second Two Month Notice, that being November 30, 2018.

Section 47(1)(d)(iii) 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 put the landlord's property at significant risk.

Based on the testimony of the landlord and photographs entered into evidence, I find that the accumulation of materials in the subject rental property constitutes a fire hazard and has put the landlord's property at significant risk. I therefore find that the landlord was entitled to end the tenancy pursuant to section 47(1)(d)(iii) of the *Act*. The landlord is entitled to receive an Order of Possession for the effective date of the Second Two Month Notice, that being November 30, 2018.

As I have found that the landlord is entitled to receive an Order of Possession for the breach of sections 47(1)(d)(i) and 47(1)(d)(iii) of the *Act*, I decline to consider the reason

to end tenancy listed on the First One Month Notice and the remainder of the reasons to end tenancy listed on the Second One Month Notice.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on November 30, 2018**, which should be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72 of the *Act*, I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: November 27, 2018

Residential Tenancy Branch