Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and tenant G.D. (the "tenant") 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 testified that the landlord was served with his application for dispute resolution on March 9, 2019 via registered mail. The landlord testified that she received the tenant's application for dispute resolution on March 9, 2019. I find that the landlord was served with the tenants' application for dispute resolution in accordance with section 89 of the *Act.*

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution 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 the *Act*.

The tenant testified that he served the landlord with an amendment in the same package as his application for dispute resolution. The landlord testified that the amendment was not included in the package. The tenant testified that the amendment added the term "basement" to the tenant's address.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the tenants' address is the basement of the subject rental property was known to the landlord and it is reasonable in the circumstances to amend the tenants' application to state that the address is in the basement. Pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the tenants' application to state that the subject rental property is a basement suite.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenants' application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in the beginning of June 2018 and is currently ongoing. Monthly rent in the amount of $1,500.00 is payable on the first day of each month. A security deposit of $750.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on March 1, 2018 she served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of April 1, 2019 (the "One Month Notice") by leaving a copy in the laundry room shared by the tenants and the landlord.

The tenant confirmed receipt of the One Month Notice on March 1, 2019. The One Month Notice was entered into evidence.

The One Month Notice does not correctly state the tenants' names and the landlord checked the box indicating that this dispute was under the *Manufactured Home Park Tenancy* Act as opposed to the *Residential Tenancy Act.* The tenant did not provide any testimony at the hearing regarding the mistakes on the One Month Notice.

The One Month Notice states 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.

The landlord testified that the tenants have unreasonably disturbed her and her family by frequently yelling and screaming and making loud noises. The landlord testified to the following incidents:

- June 4, 2018: shouting, swearing and banging for 30 minutes at 12:00 a.m.;
- June 23, 2018: loud noise and shouting at 2:00 a.m.;
- September 4, 2018: fighting and screaming;
- September 11, 2018: 30-minute verbal fight at 8:19 p.m.;
- September 26, 2018: yelling and screaming;
- December 21, 2018: fighting and screaming, neighbors call the RCMP;
- January 22, 2019: screaming, shouting and banging doors loudly;
- February 2, 2019: loud banging noises; and
- February 26, 2019: screaming and fighting, RCMP called.

The landlord testified that she provided the tenants with a warning about the noise levels via text message on September 12, 2019. The text message was entered into evidence. The tenant testified that he could not recall if he received the aforementioned text and would have to check his text messages. The landlord testified that the tenant did receive the text message because he responded to that text. The landlord read the tenant's response aloud and the tenant testified that did not know if he wrote the response the landlord read out loud. The responding text was not entered into evidence. I allowed the landlord 24 hours to enter it into evidence.
After the hearing, the landlord entered into evidence a text message from the tenant responding to the September 12, 2019 warning text. The responding text message apologized for the noise and promised that further occurrences would not occur.

The landlord entered into evidence video files in which a woman can be heard screaming and yelling. The landlord testified that these were taken from her home, which is above the tenants' basement suite.

The tenant testified that the landlord made up all of the incidents outlined above and that none of them occurred. The tenant testified that he was only served with the One Month Notice after he complained to the landlord about her noise levels. The tenant entered into evidence text messages from January 31, 2019- March 1, 2019. The tenant testified that the landlord does not make any mention about noise levels in these text messages other than one complaint about a dog barking on March 1, 2019. The tenant denied that the video clips of a woman screaming were tenant C.S. and alleged that the landlord fabricated the video files.

The landlord testified that the tenants put her property at significant risk by smoking at the subject rental property and setting off the smoke alarms. The tenant denied smoking.

Analysis

I find that while leaving a copy of the One Month Notice in the shared laundry room does not constitute service under section 88 of the *Act,* the tenants were sufficiently served, for the purposes of this *Act*, since they acknowledged receipt of the One Month Notice on March 1, 2019.

Section 68(1) of the *Act* states that if a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that

> (a)the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
>
> (b)in the circumstances, it is reasonable to amend the notice.

I find that the tenants knew or ought to have known the correct spelling of their names and that the relevant legislation was the *Residential Tenancy Act* and not the *Manufactured Home Park Tenancy Act.* Therefore, in the circumstances, I find that it is reasonable to amend the One Month Notice to include the correct spelling of the tenants' names and indicate that the *Residential Tenancy Act* is the governing legislation. I find that the amended One Month Notice meets the form and content requirements of section 52 of the *Act.*

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 tenant testified that none of the noise complaints listed by the landlord occurred. The landlord entered into evidence a text message from the tenant dated September 12, 2019 in which the tenant apologies for the noise and promises that further occurrences will not happen. I find that the tenant's evidence regarding the occurrence of loud noises is not in 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. I therefore accept the landlord's version of facts over that of the tenants. I accept the landlord's testimony as to the time and duration of noises emanating from the subject rental property.

Section 47(1)(d)(i) 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.

Section 47(1)(d)(iii) 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.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47(2) is April 30, 2019. I find that the corrected effective date of the One Month Notice is April 30, 2019.

I find that the repeated loud noises and yelling emanating from the subject rental property significantly interfered with and unreasonably disturbed the landlord. I therefore dismiss the tenants' application to cancel the One Month Notice.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since I have dismissed the tenants' application and upheld the landlord's One Month Notice, I find that the landlord is entitled to an Order of Possession effective April 30, 2019, pursuant to section 55 of the *Act.*

Since I have found that the landlord is entitled to an Order of Possession under section 47(1)(d)(i), I decline to consider if the landlord is entitled to an Order of Possession under section 47(1)(d)(iii).

As the tenants were not successful in their application, I find that they are not entitled to recover their filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act,* I grant an Order of Possession to the landlord effective at **1:00 p.m. on April 30, 2019,** which should be served on the tenants. Should the tenants 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 24, 2019

Residential Tenancy Branch