Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC-MT, MNDCT, RR, LRE, RP, OLC

Introduction

In this dispute, the tenant seeks various relief under sections 47, 62, 65 and 67 of the *Residential Tenancy Act* (the "Act"). It should be noted that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

The tenant filed an application for dispute resolution on August 8, 2020 and a dispute resolution hearing was held on September 25, 2020. The tenant and the landlord (along with her daughter) attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the preliminary issue and the issues of this application.

Preliminary Issue: Severing of Unrelated Issues

Rule 2.3 of the *Rules of Procedure* states that "Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply."

The tenant's application included claims for relief under sections 62, 65 and 67, all of which relate to an issue involving mold. While the tenant argued that the Notice was issued in retaliation to his complaints about the mold, the grounds on which the Notice were issued did not reference the mold complaints. There was, I find, insufficient

evidence, and I am not persuaded by the tenant's argument, that the Notice was in fact issued for any reason other than the grounds on which it was given. This is not to say that the Notice may not have been given for ulterior motives, but rather, there is no evidence of such.

For this reason, pursuant to Rule 2.3 of the *Rules of Procedure* I dismiss the tenant's application for relief under sections 62, 65, and 67 of the Act with leave to reapply.

Issue

1. Is the tenant entitled to an order cancelling a One Month Notice to End Tenancy (the "Notice") under section 47 of the Act?

2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy in this dispute commenced on March 17, 2020. Rent is $900.00 and the security deposit of $450.00. A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that she issued a Notice on July 31, 2020. A copy of the Notice was submitted into evidence. Page two of the Notice indicates that it was given for two reasons: Tenant or a person permitted on the property by the tenant has (1) significantly interfered with or unreasonably disturbed another occupant or the landlord, and (2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the tenant was nearly run over by the upstairs tenant in the alleyway behind the property. The two got into an argument, and the tenant sent what the landlord described as a threatening text message. A "long, long message" is how the message was described. This message was submitted into evidence.

Also submitted into evidence were various videos taken from outside the rental unit, and from within which the tenant could variously be heard singing and making noise. The landlord testified that the tenant was playing piano songs about the landlord and the occupant upstairs. She contacted the police who advised her not to speak to the tenant. The landlord testified that she felt scared by the whole incident and the threatening text.

In his testimony, the tenant testified that, yes, he got angry because the upstairs tenant almost drove over him and refused to properly acknowledge the driving behavior and refused to apologize to the tenant. Regarding the piano songs, the tenant testified that he is working on a musical, and that the songs are written from the perspective of the landlord. He explained that nothing he said at any time was in any way racist or threatening.

The tenant testified that the landlord's of the opinion that, if the tenant has any complaint about anything (for example, mold) that the tenant can just leave. "She seems to think that people can just magically move," he said. However, it is not easy to move, especially when one owns a piano. "I don't have the ability to levitate things," he added. He then said that the relationship issues between the parties did not really escalate until after the landlord issued the Notice, and this was after one written complaint he made to the landlord about the mold. As for the police, they never spoke with the tenant. In the end, the tenant submitted that the landlord simply wants a tenant who is "deaf and dumb and is on tranquilizers."

The landlord's closing submissions touch upon some unrelated matters, so I will not reproduce her testimony on this further. The tenant's closing submissions reiterated and touched upon matters already given in evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice issued under sections 47(1)(d)(i) and (ii) of the Act, which states as follows:

> A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [. . .]
>
> (d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

Regarding these two grounds, the landlord testified to being scared and provided two types of evidence: a copy of the text message referred to, and, several videos of the noise and music that the tenant caused.

In reviewing and carefully considering the video evidence, I am not persuaded that the sound and noise emanating from the rental unit is such that it either significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or that it seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Indeed, the landlord took some of the videos immediately outside the vicinity of the rental unit, which rather diminishes any argument that the noise would give rise to a ground under this section of the Act. What is more, there is nothing that I have heard that suggests the tenant was threatening the landlord in those songs or in the many instances of yelling.

The second piece of evidence was a text message that is dated July 30, 2020 and runs from 2:09 PM until 2:58 PM. This was sent by the tenant to the upstairs occupant, who lives with the landlord. Having reviewed the text message, or rather, diatribe, there is I find no reference to veiled death threats. While the tenant does make the statement that the occupant “should have been one of the Surrey six,” this statement only implies that the tenant wished the occupant was not alive. This is not the same as conveying a threat, or that the tenant would do anything. The tenant’s rather overdramatic language it is not inconsistent with someone who believes that they almost got killed.

There is no reference in the text to the landlord, and the occupant did not testify that any of the tenant’s language in the text either significantly interfered with or unreasonably disturbed them, or, that it seriously jeopardized the health or safety or a lawful right or interest of the occupant.

In short, there is insufficient evidence for me to find that the tenant committed any action that might give rise to a ground for eviction under section 47(1)(d) of the Act. Therefore, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was issued.

Accordingly, I hereby order that the Notice issued on July 31, 2020 be cancelled. The Notice is of no force or effect and the tenancy shall continue until it is ended in accordance with the Act.

All of this said, however, the tenant would be wise to refrain from yelling in the manner that he did. Such constant yelling may, in other circumstances, be grounds on which a landlord may issue a notice to end the tenancy. It would be in both parties' interests to communicate solely by text or email.

Conclusion

I hereby order that the Notice dated July 31, 2020 is cancelled.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 25, 2020

Residential Tenancy Branch