Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PARKSVILLE-QUALICUM BEACH REALTY LTD.
& AUSTIN LAND HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR, RP, PSF, OLC, FFT

Introduction

On September 8, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking a repair Order pursuant to Section 32 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. As well, V.D. and V.L. attended the hearing as agents for the Landlord, and G.L. attended the hearing as a witness for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the reception desk of the Landlord's office by hand on or around September 16, 2020; however, V.D. advised that the Landlord never received this package then. The Tenant did not have proof of serving this package. V.D. then advised that she received a copy of the Tenant's Notice of Hearing package and Application on October 13, 2020. She advised that after receiving this package, and after believing that it was served late, she took no action despite knowing that there would be an upcoming hearing and despite knowing the case made by the Tenant against the Landlord. Regardless, as opposed to requesting an adjournment, she stated that she was prepared to proceed with this hearing.

The Tenant advised that she served her evidence to the reception desk of the Landlord's office by hand on October 26, 2020. She stated that she did this so late

because of personal and health issues that she was suffering from. V.D. took issue with how late this evidence was served to the Landlord. The Tenant made this Application over six week ago and had ample opportunity to submit this evidence. As this evidence was not served to the Landlord or submitted to the Residential Tenancy Branch in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this evidence is late. As such, I have excluded this evidence and will not consider it when rendering this Decision.

V.D. advised that there was no evidence submitted by the Landlord for consideration on this file, despite her knowing about this hearing on October 13, 2020.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlord's One Month Notice to End Tenancy for Cause, that the Tenant's other claims would be dismissed, and that she is at liberty to apply for these claims under a new and separate Application.

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 complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2018, that rent was established at $1,500.00 per month, and that it was due on the first day of each month. A security deposit of $750.00 and a pet damage deposit of $200.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

V.D. advised that the Notice was served to the Tenant by being posted to her door on August 26, 2020 and the Tenant confirmed that she received this on August 27, 2020. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord." The Notice also indicated that the effective end date of the tenancy was September 30, 2020.

V.D. advised that there was a necessary repair that the Landlord needed to conduct on the rental unit; however, the Tenant hindered this repair by constantly interfering with the hired contractors, refusing entry by them into the rental unit despite agreeing to entries, and causing contractors to leave the rental unit and refuse to work based on the Tenant's behaviours. She stated that at one point, the Tenant agreed to leave keys out for the contractors to conduct repairs; however, she then removed those keys so that they could no longer gain entry. She also submitted that the Tenant and her son removed the flooring in the bathroom on August 18, 2020 without the Landlord's written consent.

She stated that the Landlord has not always given the proper written notice for every entry into the rental unit pursuant to Section 29 of the *Act*; however, the Tenant has been sent many emails for entry and she has agreed to those times and dates. After some of these agreed upon entries, she would then prevent the repair person from entering the rental unit. She advised that the Tenant constantly micromanaged and harassed the tradespeople, that would enter the rental unit to conduct necessary repairs, to the point that one contractor walked off the job site.

G.L. testified that on August 10, 2020, he entered the rental unit to conduct repairs on a water leak and the Tenant would advise him of how to do the appropriate repairs. She would continually tell him how to do the repairs or make constant requests for other jobs

to be done. He stated that over the next few days, he would tend to other necessary repairs; however, the Tenant would always be advising him that the repairs were not being conducted properly, that she would continually ask for other remedies to be conducted that were beyond the scope of the repair, and that he would try to accommodate her as best as possible while still focusing on the necessary repairs. The Tenant would interfere so much with his ability to do the repairs that he became frustrated and left the job site.

In addition, V.D. advised that the Tenant's dog constantly barks, and the Tenant's TV is so loud that these disturbances have caused her neighbour to want to move out. She stated that the Tenant was given three warning letters, starting in 2019, to reduce her noise disturbances; however, she has declined to make any necessary changes. V.L. confirmed that the neighbour has advised that she would be hiring a mover to assist her in moving because of these disturbances.

The Tenant advised that she is a former project manager and has spent her career in the renovation and construction industry. She stated that there was a cold-water leak in the rental unit and G.L. was not outfitted with the correct tools to conduct any necessary repairs so she lent him access to her tools. She advised that mould formed under the drywall, that the carpet was damaged from moisture, and that she removed the bathroom flooring due to a sewage leak. She acknowledged that it was her belief that the renovations were not being conducted in a manner that she understood to be adequate, so she was involved in ensuring that work would have been completed to her interpretation of suitable health and safety standards. It is her belief that lending her tools to tradespeople is not an impediment to them completing the work. In addition, she does not believe that ensuring proper remediation is problematic.

She confirmed that the Landlord notified her most times of entries or that she would coordinate with tradespeople for entry into the rental unit; however, the Landlord did not always give the proper written notice for entry in accordance with the *Act*. She stated that she only barred entry to the rental unit when the proper written notice was not given by the Landlord or when she did not make alternate arrangements for entry with the tradespeople. She submitted that she would sometimes come home from work and the tradespeople would have left her door unlocked, so she no longer provided the keys outdoors for these people to access her unit.

Regarding the dog barking and the TV noise, the Tenant advised that she used to be friends with her neighbour. She confirmed that her dog barks when baited and when it goes outside. She stated that she would "bet that her TV is loud" and that this would

happen occasionally. She acknowledged that she received warnings from the Landlord due to these complaints.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 29 of the *Act* requires that the Landlord provide the proper written notice for entry into the rental unit.

Section 32 of the *Act* outlines the Landlord's obligations to repair and maintain the rental unit.

A Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

> ***47*** *(1) 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:*
> >
> > > *(ii) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Regarding the validity of the reason indicated on the Notice, I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The consistent and undisputed evidence is that there was a required repair in the rental unit that the Landlord was responsible for fixing. While there were other issues submitted for why this Notice was served, I am satisfied that the crux of this matter revolves around the manner with which this repair was able to be completed. I acknowledge the Tenant's submissions that the Landlord did not provide the proper written notice for all of the entries into the rental unit; however, there are instances where the Tenant did agree with the Landlord or tradespeople for times to enter. Regardless, if the Tenant had issues with when or how the Landlord or agents for the Landlord entered the rental unit, the Tenant could have sought remedy through the Residential Tenancy Branch if the Landlord continued to enter contrary to the *Act*, after being warned by the Tenant in writing.

In my view, the pertinent issue here pertains to the manner with which the Tenant involved herself in the repair that was the responsibility of the Landlord to complete. It is clear from the parties' testimony that due to the Tenant's background in construction, it was her belief that she knew the manner with which all of the deficiencies in the rental unit needed to be fixed. Furthermore, as a Tenant of the rental unit, while it was not her role or responsibility to be involved in this repair, she elected to include herself in this process and attempted to direct the tradespeople in how she believed the repairs would need to be conducted. It is evident that the manner with which the Tenant elected to carry herself was deemed to be micromanagement and harassment of the tradespeople to the point that the repair work was impeded and hindered.

Despite her claims of expertise in this field, the Tenant does not have a right to dictate how the Landlord's repair should be executed or completed. Should any repair not be completed in a manner that complies with health, housing, or safety standards required by law, then the Tenant can seek remedy for the Landlord to rectify these problems. Based on the consistent evidence before me, I am satisfied that the Tenant continued to behave in a manner that was beyond her role as a Tenant, and caused the Landlord unnecessary hardship in attempting to complete a required repair of the rental unit.

Considered in its totality, I am satisfied from the consistent evidence that the Landlord has sufficiently substantiated the ground for ending the tenancy under the reason on the

Notice. As such, I dismiss the Tenant's Application. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, and as the Tenant's Application has been dismissed, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

Pursuant to Section 55(3) of the *Act*, I have the authority to extend the timeframe for when the Tenant is required to vacate the rental unit. I grant the Landlord an Order of Possession that takes effect at **1:00 PM on November 30, 2020** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective at **1:00 PM on November 30, 2020** after service of this Order 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.

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 30, 2020

Residential Tenancy Branch