Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The tenant filed an Application for Dispute Resolution on August 31, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the "One-Month Notice"). They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 13, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant, their representative, and the agent of the landlord (the "landlord") attended the hearing. Each was provided the opportunity to present oral testimony and make submissions during the hearing.

Both parties confirmed receipt of the other's prepared evidence in advance of the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One Month Notice?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord presented a tenancy agreement signed by the tenant and then-management for this tenancy that started on December 1, 2009. The landlord provided a Tenant Estoppel Certificate dated April 17, 2020 to show the original agreement remains in effect with a new management firm being named as the landlord. The current rent is $872.00 per month.

The landlord provided details from the previous manager from August 2019 through to March 2020. The landlord also provided a detailed account from July 7, 2020 onwards to the date of the service of the One-Month Notice on August 25. There are additional logs of complaints from other neighbours after this date through to September 29, 2020. Incidents involve the unit door propped open and the tenant's TV volume audible to other neighbours on the same floor and loud banging. The landlord's account refers to photos and videos of some of the incidents in question and describes the landlord's service of the One-Month Notice.

There were direct letters to the tenant, as presented by the landlord, within this time period. Each bears the notation on them that the landlord hand delivered them, each with the time noted. The details are as follows:

- July 21, 2020 – notifies the tenant of complaints "over the last two weeks" with specific dates – these involve "loud yelling and grunting noises". The landlord also makes recommendations on specific steps to take to ensure airflow within the unit;
- July 31, 2020 – lists written complaints through July 2020 and that "I will not tolerate any more yelling at me, or at any other tenants." Further: All tenants in the building have a legal right to quiet enjoyment of their premises. . .. It is now at the point where other occupants are afraid of you."
- August 25, 2020 -- this accompanied the One-Month Notice. It states: "Since my final warning letter to you July 31, 2020, I have continued to received [*sic*] verbal & written complaints from multiple building occupants. . ."

The reasons stated on the document are:

- □ tenant . . . has:
  - □ significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - □ seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- □ breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

In the August 25 letter and One-Month Notice, the landlord referred to a previous arbitration decision wherein the decision maker made the specific orders for the tenant to keep the unit closed and not engage in behaviour such as yelling and keep the noise to a reasonable level. That decision is dated October 10, 2019 and the landlord here provided a copy. In the hearing, the landlord referred to this decision as the official written notice to correct the breach of a material term.

The landlord provided copies of pictures and video clips of the situation with the tenant in the rental unit. They also provided detailed lists of what is shown on each piece.

In the hearing, the landlord presented a chronology of the events since their taking on the landlord position in July 2020 and referred to the accounts of the previous property manager. They reiterated that service of the One-Month Notice was accompanied by a letter, and basically this is now "three letters and you're out".

They submitted it is now one year after the prior arbitration decision instructing the tenant to not engage in certain actions that frustrate neighbours. The landlord also underlined that they ended each piece of correspondence to the tenant with the plea to the tenant to call them and discuss matters to try to reach a solution.

The tenant submitted their sworn affidavit dated August 31, 2020 for this hearing. The gave their response to the salient points raised by the landlord in preparation for this hearing. These include:

- in February 2020 they had a knee operation that caused excessive pain – on the day after this police officers visited their unit, and this was the only occurrence of police visiting
- the landlord here discussed the tenant's cart chained to the outside of the building – the landlord followed this conversation with a letter dated July 14, 2020
- paragraph 24: "In this July 14th, 2020 letter he mentions that it is the second letter that he has sent me. I do not recall receiving an earlier letter."
- the landlord's July 31, 2020 letter outlines complaints and states "This is the second letter I am writing you regarding the excessive noise arising from your unit." – in paragraph 29 the tenant states they did not receive a letter before this, nor did they receive copies of written complaints;
- since the October 11, 2019 Arbitrator decision, they tried to keep their door closed and noise level lowered;

- they explain the TV noise with respect to daily viewing and the reason the door is left open;
- they received the letter dated August 25, 2020 that accompanied the One-Month Notice;
- paragraph 40: they "have never received a Notice to End Tenancy in the 9 ½ years prior to the new property manager being appointed under the previous owner and now with the new owners."

The tenant's representative in the hearing presented that this is a situation that cannot be termed a "nuisance". They provided that certain portions of the landlord's evidence are flawed in that it refers to matters indirectly known to the landlord prior to their tenure as property manager. Additionally, the information conveyed by the previous property manager is hearsay. They also questioned the certainty of the One-Month Notice giving a reason of the tenant breaching a material term – its only basis was referring to the previous arbitrator decision, which is not a warning to comply with respect to a material term of the tenancy agreement. They underlined this is a very recent timeline, since July, in which the landlord has established their case to evict the tenant; this is in contrast to the length of the time the tenant has been in the unit over the years.

In their evidence, the landlord also provided a detailed response to the tenant's sworn affidavit.

Analysis

The *Act* section 47(1) contains the following provisions:

> (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
>
> i. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> ii. seriously jeopardized the health or safety or lawful right of another occupant or the landlord
>
> (h) the tenant
>
> i. has failed to comply with a material term, and
>
> ii. has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 47(4) of the *Act* states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the One-Month Notice was issued pursuant to section 47 and I accept the landlord's evidence that they served this document to the tenant on August 25, 2020.

When a landlord issues a One-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy. This is set out in the Residential Tenancy Branch Rules of Procedure number 7.18.

I find the landlord has met the burden of proof to show that the tenant has interfered with and unreasonably disturbed other occupants and the landlord of the property. Additionally, they have jeopardized the lawful rights of other occupants insofar as they have ignored others' right to quiet enjoyment of the common areas and their own individual units.

I find the evidence shows there was significant noise emanating from the tenant's unit. There is also strong evidence that shows the tenant would shout at other tenants and the landlord unprovoked. The strong evidence from the landlord is that the tenant, on their first meeting, gave a verbal insult to the landlord.

I agree with the tenant's representative who submitted that the landlord's reference to the previous arbitration decision of October 2019 is not breach of a material term. As set out in section 47 of the *Act*, the material term must be clearly identified as such to the tenant; in this situation, I find it was not expressed in those terms to the tenant.

I find this is a minor flaw when weighed against other components of the landlord's evidence, and also against the affidavit presented by the tenant.

The landlord entered the situation in July 2020. This is a relatively recent timeframe in which to address the problem with the tenant. The tenant's representative called the accuracy of the prior accusations, as conveyed to the landlord, into question. I find this does not detract greatly from the overall weight of the landlord's evidence in two respects. First, the landlord's evidence shows that a previous owner did not want to address the situation and instructed the prior manager to inflate the situation. Secondly, there is the previous arbitration decision that sets out a fact pattern containing references to ongoing issues with the tenant. The decision itself shows the tenant attended that hearing; I find the issues were before the tenant quite some time prior to the landlord's start in summer 2020.

The evidence shows the landlord here made the effort to communicate clearly with the tenant and provide fulsome background information when presenting the issue to the tenant. This is by way of letters dated July 21 and July 31. I find the landlord prepared evidence in advance

of their notices to the tenant – these are the sound and video recordings provided for this hearing.

Turning to what the tenant presents here, their affidavit comes short of sufficiently addressing the issue in two ways. First, the tenant does not address the evidence of their shouting or using strong language toward other tenants directly. The landlord's evidence was clear in describing their first interaction with the tenant. There is another piece in the evidence that describes the tenant throwing a fan out into the hall when it was gifted to him. One video contains clearly audible profanity at a shouted level coming from the tenant's unit. The tenant neither addressed this point directly in the affidavit, nor did they speak to it in the hearing. There was no acknowledgement from the tenant on this finer point of the landlord's evidence.

Secondly, the tenant's account is not clear on the communication they received from the landlord. In paragraph 29, they stated they did not receive a previous letter; however, I find they did where the landlord's evidence is clear on their hand delivering a letter to the tenant on July 21, 2020. Further, in paragraph 24 they stated the July 14 letter mentions it is the second letter; however, the enclosed July 14 letter does not state this. Finally, in paragraph 40 they state they "never received a Notice . . . in the 9 ½ years prior to the new property manager being appointed". This simply is not the case where the evidence clearly shows the tenant received two prior notices in 2019, one of which was the subject of a prior arbitration.

In summary on the tenant's evidence, I find there is no acknowledgement of the impact their behaviour has on social norms. The evidence is very strong that it is intense and disturbing to other residents. These social norms govern a residential tenancy living arrangement. By contrast, the correspondence from the landlord to the tenant each time contains the invitation to discuss the issue openly and attempt to arrive at a solution.

I find the situation did not cease after requests from the landlord to the tenant. I find that by the tenant's failure to pay heed to the issue, they jeopardized the legal rights of other occupants to quiet enjoyment. The landlord stated this plainly in their letter to the tenant dated July 31, 2020.

The tenant's application to cancel the One Month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

By this provision, I find the landlord is entitled to an Order of Possession. I have given due consideration to the tenant representative's submission that ending the tenancy would put the tenant in a difficult spot. I have factored this consideration in to the effective date of the Order of Possession.

Because the tenant was not successful in their Application, I find they are not eligible for reimbursement of the Application filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **November 15, 2020.** The landlord is provided with this Order in the above terms and must serve the tenant with this Order as soon as possible. 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 *Act*.

Dated: October 15, 2020

Residential Tenancy Branch