Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AAT, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47 of the Act;
- an order for the landlord to allow the tenant or his guests to access the rental unit, pursuant to sections 30 and 70 of the Act;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. The landlord was assisted by advocate KF. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Update of Tenant's Address

At the outset of the hearing the tenant corrected his address. Pursuant to section 64(3)(a) of the *Act*, I have amended the tenant's application.

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 cancellation of the Notice is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

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 notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. Is the tenant entitled to an authorization to recover the filing fee?
3. If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started on March 01, 2017. Rent is $1,250.00 per month, due on the last day of the prior month. At the outset of the tenancy a security deposit of $600.00 was collected and the landlord still holds it in trust. The rental unit is the basement of the rental building and the landlord lives in the main unit. The tenant pays 40% of the shared electricity bill.

Both parties also agreed the Notice was received on August 26, 2020. This application was filed on September 04, 2020 and the tenant continues to live in the rental unit.

A copy of the Notice was provided. The Notice is dated August 26, 2020 and the effective date is September 30, 2020. The reasons to end the tenancy are:

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.
- Put the landlord's property at significant risk.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of events are:

Tenancy agreement states one food truck is to be plugged into the house. [tenant] has been plugging his hybrid vehicle into his commercial food truck and then into the house. This started when [tenant] purchased his hybrid car in early March, 2020.
The power amperage is too high and causes an overload to the electrical panel constantly causing the breaker to blow. [tenant] has been given multiple warnings and on March 14th 2020 was given a strict written instruction, to immediately stop plugging in of the hybrid car, as it is a fire, health and safety issue, which is also against out tenant [SIC] agreement.
[tenant] has continued to overload the electrical box multiple times with no regard to the damage and fire hazard this can cause. For the safety of myself and home I do not feel sage having [tenant] living in my residence because he has knowingly disregarded my fore concern and tenancy agreement. Pictures documents with dates showing vehicle plugged in before and after written warning was given.

Both parties agreed the tenant's food truck (the truck) can be plugged to the rental unit's electrical outlet.

The tenant said the truck has a fridge/freezer combination, a stand-up freezer, a wine cooler, a hot water tank and a preparation table. The only commercial item in the truck is the preparation table, the truck is electric certified and has been plugged to the rental unit's 15 amperes electrical outlet since the beginning of the tenancy. The hot water tank is connected to a separate electrical breaker in the truck because it needs a higher amperage, but this appliance only runs when the truck is using electricity from the truck power generator.

The tenant affirmed in one occasion he used the hot water tank when the truck was connected to the rental unit's outlet. Later in the hearing the tenant stated he does not use the hot water tank 99% of the time the truck is parked in the rental unit's garage and the hot water tank can run in the same electrical breaker as the other appliances if the preparation table is turned off. On August 12, 2020 the tenant forgot to turn off the hot water tank when the truck was connected to the rental unit's outlet, the electrical circuit overloaded and caused the breaker to trip.

The tenant purchased a hybrid electric vehicle in March 2020 and started plugging it to a regular 15 amperes outlet in his truck which is plugged to the rental unit's outlet. The tenant affirmed before he purchased the hybrid vehicle there were some occasions the rental unit's breaker tripped when the food truck was connected to the rental unit's electrical system. At a later point in the hearing the tenant affirmed the rental's unit breaker only started tripping when the hybrid vehicle was purchased. When the hybrid vehicle is plugged to the truck the preparation table is not used. Photographs of the vehicle plugged to the truck were submitted into evidence.

The tenant sent a text message (submitted into evidence) to the landlord on March 03, 2020 stating he will no longer connect his hybrid vehicle to the truck. However, the tenant contacted the Residential Tenancy Branch and was informed he can plug his hybrid vehicle. The tenant sent a letter to the landlord (submitted into evidence) explaining that he has the right to plug his hybrid vehicle to the rental unit's electrical system.

The landlord stated on the March 03, 2020 text message:

> Also as a written notification for both of us, we have had no spoke or written words of an electrical car being plugged into the home. We just spoke of your hybrid car and the buried electrical cord found this morning. I found this morning plugged into the back off the house and well as your commercial food truck plugged into the side off the house. As per our conversation you purchased the car yesterday and plugged it in. **I believe this extra plug in vehicle to be a breach of our rental contract and will contact Fortis for further information on cost, power source etc. As I believe it may push the electrical cost up more into the second tier. Or maybe needed changes to the electrical outlets themselves.**
>
> (emphasis added)

The tenant replied on March 04 and affirmed he is not breaching his rental agreement.

On March 12, 2020 the landlord texted the tenant: "I can see this is the reason why the breaker keeps switching off. Yes the breaker was flicked". The tenant replied: "Thank you. I appreciate it."

The landlord sent a letter to the tenant on March 16, 2020. It states:

> […] no longer plug in his hybrid vehicle to his commercial food truck and then have this food truck plugged into the residence at [rental unit's address] as this is unsafe and a fire hazard.

On August 24, 2020 the landlord texted the tenant:

> It would be great to find a resolution regarding the safety issue on the electrical And the agreement you had given me not to plug your car, I thought we could find some sort of resolution. I am asking to please stop plugging your car into your truck and into the house.

The landlord affirmed the rental unit's electrical system does not support the food truck and/or the hybrid vehicle. The electrical installation is adequate for residential usage and was inspected by a professional electrician on September 25, 2020.

The landlord affirmed both the electrician and a voluntary firefighter that inspected her house in early August 2020 concluded the truck plugged to the rental unit's electrical system overloads it, causes a fire hazard and significantly jeopardizes the safety of the landlord and puts the landlord's property at significant risk. The landlord also affirmed the property insurance will not cover any accident because of the commercial truck. The landlord listed five dates the electrical breaker tripped between January 20 and August 22, 2020.

Analysis

As the tenth day to dispute the Notice was September 05, 2020 and the tenant filed this application on September 04, 2020, I find the tenant disputed it within the time frame of section 47(4) of the Act.

Based on the landlord's cohesive testimony, text messages dated March 03, 12 and 16 and August 24, 2020 and the Notice details of event, I find the reasons why the Notice was issued is the tenant's usage of the rental unit's electrical system, which is causing a fire hazard and significantly jeopardizes the safety of the landlord and puts the landlord's property at significant risk.

Based on the tenant's text messages dated March 04 and 12, 2020, I find the tenant is aware that his usage of the electrical system is constantly overloading the electrical system and flicking the electrical breaker.

As the tenant is aware the reasons for the Notice are related to electrical safety, I find it is not relevant if the risks to the electrical system are caused by the plugging the truck, the hybrid vehicle or both.

Based on the landlord's testimony and text messages dated March 03, 12 and 16 and August 24, 2020, I find the tenant was warned that his usage of the electrical system is overloading it and the tenant continued to cause the electrical system to overload. I also find the overloading of the electrical system is seriously jeopardizing the safety of the landlord and putting the landlord's property at significant risk.

Section 47(1) of the Act states:

> 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 a lawful right or interest of the landlord or another occupant, or
> (iii)put the landlord's property at significant risk;

I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(d)(ii) and (iii) of the Act.

As the Notice is confirmed, I make no findings regarding the other reasons cited by the landlord to end the tenancy.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form. I confirm the Notice and find the tenancy ended on September 30, 2020. I dismiss the tenant's application without leave to reapply.

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 and the tenant's application is dismissed, I must consider if the landlord is entitled to an order of possession.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order. 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. The order of possession should be served immediately.

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