Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RP, FFT

Introduction

The tenants (hereinafter, the "tenant") filed an Application for Dispute Resolution on May 28, 2021, seeking:

- cancellation or withdrawal of the One Month Notice to End Tenancy for Cause (the "One-Month Notice") issued by the landlord on May 27, 2021;
- repairs made after prior contact to the landlord;
- reduced rent for repairs agreed upon but not provided;
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on September 28, 2021.

Both the landlord and the tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded.

Preliminary Matter

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on the notice issued by the landlord. I dismiss the tenant's claims for repairs, and a reduction of rent for the lack thereof, with leave to re-apply.

Issues to be Decided

Is the tenant entitled to a cancellation or withdrawal of the One-Month Notice?

Should the tenant be unsuccessful in cancelling the Notice, is the landlord entitled to an order of possession, pursuant to s. 55 of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement for this tenancy that started on May 15, 2021. At the time of this hearing, the rent paid was $1,400 per month. Both parties signed the agreement on May 15, 2021.

The tenant provided a copy of the One-Month Notice. The landlord stated they served this document on May 27, 2021 by affixing it to the door of the rental unit. in person and the tenant confirmed this. This gives the move out date of December 31, 2020.

On page 2 of the document, the landlord provided the reasons that they issued this document:

- Tenant or a person permitted on the property by the 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
  - put the landlord's property at significant risk
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit

On page 3 of the document, the landlord provided details:

- caused a small fire in . . . kitchen which emitted enough smoke to trigger all smoke alarms
- Significantly interfered with landlords right to peaceful enjoyment by, on numerous occasions, played music at a level high enough to cause the floor to vibrate, and overpower the regular volume of the TV
- . . . harassing text messages, handling of private property, and accessing parts of the property. . . not deemed a common area
- unreasonable disturbing the neighbours by yelling at them while in their vehicles, and creating a disturbance on the street outside the property
- Seriously jeopardized the health and safety of the landlord and their guests by smoking on and near the property
- Knowingly provided false information during the application process in regards to both being non-smokers, and to [their] status of employment
- Intentionally creating significant by . . . attracting and feeding wildlife contrary to [local] bylaws
- created a significant fear of violence and threats to the landlord through verbal abuse, direct threats, intimidation. The landlords are frightened to live in their own home.

The landlord provided several pieces of evidence of their communication with the tenant from the start of the tenancy. This includes letters, video, emails, text messages and pictures. The videos show visits from the fire department and gas service provider. There were problems with emergency services attending for a fire alarm, and the landlord in their evidence showed the alarm service showed the monoxide alarm in the rental unit was tampered with. Video shows the tenant interacting with both police and fire responders.

The salient points of the landlord's submissions in the hearing are:

- there has been lots of "harassment and verbal abuse" since the start of the tenancy
- the tenant called the police within the first few weeks, just for the landlord entering their own home
- for each month since the start of the tenancy, the tenant was late paying the rent, sometimes as late as the following week
- no use of the security system
- keeping their own pet, and feeding local fowl in the area
- people going to the unit at unusual hours and knocking on windows, pulling out cash and taking it to the basement
- the police on one of their calls advised the landlord to not interact with the tenant, to not provoke them, on May 30

- the landlord's moved out because of this, and matters affecting the tenancy have interfered with the landlord's own employment.

The landlord employed a property manager to assist in managing the tenancy within the first month. This manager attended the hearing and spoke to their interaction with the tenant, which was "hostile from the very beginning." They attempted to fix the pressing issue of dryer repair; however, the tenant refused the manager's assistance, saying "we don't know who you are." As stated by the tenant in the hearing, the property manager's presence and attempt to complete a basic repair was met with the tenant's call to the police.

The tenant provided a copy of a previous dispute resolution hearing where the Arbitrator dismissed the landlord's Application to end the tenancy in an expedited manner. This was dismissed due to the Arbitrator's finding that doing so over and beyond the normal route for ending a tenancy was not unreasonable or unfair.

In addition to this the tenant provided copies of documents found elsewhere in the landlord's evidence.

In the hearing, the tenant denied specific points brought by the landlord. They presented the difficulty they had with the landlord in trying to have the dryer repaired. Specifically, they denied there were frequent visitors who appeared to drop money and retrieve something before departing, at any given hour of the day.

The tenant admitted to calling the police. This was for what they understood was the landlord's non-compliance with tenancy laws. This was also for their complaint about the landlord walking around in the unit upstairs that disturbed the tenant's sleep. Also, upon their introduction to the property manager, that manager attempted to set out that the tenant must pay a pet damage deposit. The tenant described this as "harassment big time" and disclosed this also prompted another call to the police.

Additionally, two witnesses appeared for the tenant. They spoke about the ease with which they interact with the tenant here. This involves their frequent visits and can involve sharing food freely. These can be very frequent and short visits. To reiterate this point in their submissions, the tenant provided that it is friendly neighbours that are making the visits which the landlord assumes are drug transactions.

In the hearing the tenant also mentioned the relative difficulty they would have in finding a different living arrangement. They are aware the tenancy is fraught with difficulty and tension; however, they have not pooled resources to find a suitable alternative. They stated they do

not want to live in this situation anymore. In the hearing, the tenant stated: “pay us to get out of there and we’ll leave.”

Analysis

The *Act* s. 47 states, in part:

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

The *Act* s. 47(4) 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 landlord issued the One-Month Notice pursuant to s. 47 and I accept the landlord’s evidence that they served this document to the tenant on May 27, 2021.

The level of detail in the landlord’s evidence – referring to separate instances with the tenant in the past – validates one of the grounds selected by the landlord on the One-Month Notice. This is where the tenant “significantly interfered with or unreasonably disturbed another occupant or the landlord.”

The evidence showing significant interference or unreasonable disturbance is as follows:

- On more than one occasion, the tenant called to police without sufficient reason. I find this is a repeated pattern. Two instances show the tenant calling the police: one for the landlord’s footstep sounds upstairs, and the other when the property manager was making a routine repair. I find these calls as well as other matters that had the police visit to the property are those that *significantly interfere* with, or *unreasonably disturb* the landlord.
- I find the fire alarms and the ensuing visits by the fire department are actions that *unreasonably disturb* the landlord as well. I find it more likely than not that this was *not* the result of the tenant cooking, or, as stated somewhere in the evidence, merely burnt

toast. On their own, these incidents seem negligible; however, they add to the overall concern for the tenant's conduct, and their harsh reactions when questions are raised.

- I find it more likely than not the tenant tampered with the carbon monoxide detector within the rental unit. Tampering was raised as a concern by trained, industry-specialist professionals. This was specific to the rental unit. The call to the utility provider and subsequent attempts at ascertaining correct information impinged on the landlord's time; therefore, this also constitutes an unreasonable disturbance.
- I find the evidence in the form of audio and video – a large number submitted by the landlord – shows the tenant being belligerent with service providers, fire, and police. This is captured in the form of audio, and I am able to discern this behaviour in video submitted by the landlord. I find it is this behaviour that led police to instruct the landlord to limit or cease their interactions with the tenant. Given the plethora of other evidence and submissions by the landlord, I find the landlord is credible on their point that they received this input from the police. This evidence is *not* outweighed by the witnesses who attended the hearing and made statements on the tenant's character in the hearing.
- The above point is repeated based on the direct testimony of the property manager who attended the hearing. This is direct first-person testimony of a party who is otherwise a neutral observer to the landlord-tenant relationship, and who has no interest in the value of the property. As stated by the tenant directly in the hearing: "I do have a loud voice and I will speak up. But I won't let [the property manager] come in and push me around." This was the tenant describing the first interaction with the property manager. I find this establishes the tenant is not in a co-operative frame of mind; moreover, it constitutes significant interference with the landlord who was trying to manage the property in a non-confrontational way. I find on this point the fact the landlord had to hire a property manager especially to deal with this tenancy in and of itself stands as proof of significant interference or unreasonable disturbance.

I find the above points, in establishing a pattern of significant interference or unreasonable disturbance, are relevant points aside from the tenant's prominent mode of communication. This is confrontational, and as demonstrated in the hearing is passive-aggressive in nature. Twice in the hearing, the tenant laughed in reaction to what they heard from the landlord. I conclude with sufficient reason that this is what led the landlord to stay away from the property altogether. I find the conflict will continue and reach severe proportions should the tenancy continue.

In the hearing, the tenant mentioned they suffer from PTSD. There was evidence that this condition is what led to their complaints about the landlord's footsteps in the unit above. This

is a legitimate and widely known condition; however, the tenant did not present evidence of a positive diagnosis of PTSD, which could help to explain their behaviour.

While the tenant relied on their positive interactions they have had with other neighbours, I give more weight to the evidence of the landlord here to show that there has been a sustained pattern of interference or disturbance, stemming from this tenant.

I reiterate there is a distinction between the statutory scheme used by the landlord in the prior hearing in July: that was for an urgent and immediate end to the tenancy, where a normal approach to ending a tenancy will not suffice in an emergency situation. By contrast, this present hearing is the process utilized where there is not an extremely urgent situation and follows from the One-Month Notice issued by the landlord, started by the landlord even prior to the landlord's application for the other hearing. The prior hearing and the findings of the Arbitrator have no bearing in my rationale in this present hearing.

In line with s. 47 criteria, I find the tenant's actions were those which "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property." The landlord has provided substantial evidence of the tenant's conduct and interactions with other residents that causes legitimate concern.

The *Act* s. 52 provides:

> In order to be effective, a notice to end a tenancy must be in writing and must
> (a)be signed and dated by the landlord or tenant giving the notice,
> (b)give the address of the rental unit,
> (c)state the effective date of the notice,
> (d). . . state the grounds for ending the tenancy,
> . . .and
> (e)when given by a landlord, be in the approved form.

I find the One-Month Notice bears sufficient detail as to comply with the requirements of s. 52 regarding form and content.

I find the One-Month Notice issued by the landlord on May 27, 2021 complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. By this provision, I find the landlord is entitled to an Order of Possession.

Given that the tenant was not successful in their Application, there is no reimbursement of the Application filing fee.

Conclusion

Under sections 55(1) and 55(3) of the *Act*, I grant an Order of Possession **effective two days 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 s. 9.1(1) of the *Act*.

Dated: October 6, 2021

Residential Tenancy Branch