Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HILDON HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: **CNC**
Landlord: **OPC, FFL**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;

This hearing also dealt with the Landlord's cross application pursuant to the Act for:

1. An Order of Possession for a One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47, 55 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. Two Building Managers for the Landlord, the Tenant and his Support attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on July 26, 2022 by posting the notice on the Tenant's door. The Tenant confirmed receipt of the One Month Notice.

I find the One Month Notice was deemed served on the Tenant on July 29, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant applied for dispute resolution for the One Month Notice on August 4, 2022. The RTB emailed the Notice of Dispute Resolution Proceeding package to the Tenant for this hearing (the "NoDRP package") on August 24, 2022. The Tenant testified he did not serve the NoDRP package on the Landlord. Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

a. by leaving a copy with the person;
b. if the person is a landlord, by leaving a copy with an agent of the landlord;
c. by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
d. if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
e. as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
f. by any other means of service provided for in the regulations (e.g.: by email).

As the Tenant did not serve the Landlord at all with the NoDRP package, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Tenant's application against the Landlord. I dismiss the Tenant's application without leave to re-apply.

The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package-OP and evidence on October 4, 2022 by Canada Post registered

mail (the "NoDRP package-OP"). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision.

The Tenant confirmed receipt of the Landlord's NoDRP package-OP and evidence but stated he could not view the Landlord's .mov file. The Landlord also did not confirm whether they checked in with the Tenant that he could view this file. RTB Rules of Procedure 3.10.5 states:

> ***3.10.5 Confirmation of access to digital evidence:*** *The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.*
>
> *Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.*
>
> *Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.*
>
> *If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.*
>
> *If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.*
>
> *Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.* (emphasis mine)

I find that considering this .mov file would be procedurally unfair to the Tenant, and I decline to consider it. For the remaining items in the Landlord's NoDRP package-OP package, I find that the Tenant was deemed served with the NoDRP package-OP five days after mailing them on October 9, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

Naming parties

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenant's application, the Tenant named the Landlord, not by the business name, but by using the Building Manager's name. In the hearing, I asked the parties if I had their agreement to amend the Landlord's party name in the application. All parties agreed, and the correct Landlord name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept that the Landlord is properly named as the current company name and not the Building Manager's name. I amended the Landlord's name and it is reflected in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the One Month Notice?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on September 1, 2021. Monthly rent is $550.00 payable on the first day of each month. A security deposit of $275.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has allowed an unreasonable number of occupants in the unit/property; and has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The effective date of the One Month Notice was August 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

> *We have received several complaints about [unit #], [Tenant] and his visitors.*
>
> *On July 24, 2022 at 6:50 am [unit #] [Tenant]'s visitor were loitering in the hallway, disturbing the tenants on the [##] floor.*
>
> *One tenant reported being threatened by [unit #]'s visitor as he was walking past.*
>
> *[unit #] has received several letters and warnings about the issues with the noise and his visitors but nothing has changed.*

The Landlord testified that the issues with the Tenant's visitors have continued despite them serving the Tenant with the One Month Notice. The Landlord said drug use happens in the hallways, the Tenant's visitors are hanging out in the hallways, and they continue to harass other tenants.

The Landlord also stated that the Tenant's visitors harass the Landlord's staff. On May 31, 2022, the Landlord spoke to the Tenant about these behaviours. The Landlord said, the Tenant agreed to be more accommodating, but no change has occurred and there continue to be lots and lots of incidents.

The Landlord seeks an Order of Possession.

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 notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant section for this matter. It states:

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:*

…

(c) there are an unreasonable number of occupants in a rental unit;

(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,

…

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The Tenant was deemed served with the One Month Notice on July 29, 2022. I find that the One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on August 4, 2022 which was within the 10 days after receiving the One Month Notice; however, the Tenant did not serve the NoDRP package on the Landlord, and I dismissed his application to cancel the Landlord's One Month Notice without leave to re-apply.

As the Tenant was unsuccessful in his application, I must consider if the Landlord is entitled to an Order of Possession for cause. Section 55 of the Act reads as follows:

Order of possession for the landlord

> ***55*** *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
>
> *(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
>
> *(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I previously found that the One Month Notice submitted into documentary evidence complied with Section 52 of the Act. Based on the totality of the evidence submitted by both parties, I uphold the Landlord's One Month Notice. I grant an Order of Possession to the Landlord which will be effective on January 31, 2023 at 1:00 p.m.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective on January 31, 2023 at 1:00 p.m. The Landlord must serve this Order on the Tenant 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.

The Landlord may deduct the $100.00 application filing fee from the security deposit due to the Tenant.

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: January 09, 2023

Residential Tenancy Branch