Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, LRE, FFT

Introduction and Preliminary Matters

On June 22, 2023, the Tenant made an Application for Dispute Resolution 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 to set conditions on the Landlord's right to enter pursuant to Section 70 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, and it was determined that the other person listed as an Applicant on the Application was not a tenant. As such, this person was removed from the Style of Cause on the first page of this Decision. The Landlord attended the hearing as well.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package, with some evidence, was served to the Landlord via email, but he was not sure when he did this. He acknowledged that he did not have consent to serve the Landlord in this manner. The Landlord confirmed that he received this package from the Tenant via email, and that there was no consent to exchange documents by email. However, he accepted service

of this package. As such, I am satisfied that the Landlord was duly served this Notice of Hearing package.

The Tenant then advised that he served additional evidence to the Landlord on July 17, 2023, by registered mail. However, it appears as if he uploaded this evidence to the file on July 20 and July 23, 2023. The Landlord advised that he did not receive much of the Tenant's evidence. Given that the Tenant was uncertain in his testimony about service of documents, I am not satisfied that his evidence was served or that it was served within the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"). As such, I have excluded the Tenant's evidence and will not consider it when rendering this Decision.

The Landlord advised that he served his documentary evidence to the Tenant by attaching it to the Tenant's door on July 25, 2023, and that he did not serve his digital evidence to the Tenant. The Tenant confirmed that he received this documentary evidence. As this documentary evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted this evidence and will consider it when rendering this Decision. As the Landlord's digital evidence was not served, this evidence will be excluded and not considered when rendering this Decision.

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 Notice and that the Tenant is at liberty to apply for any other claims under a new and separate Application.

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.

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 is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the 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 May 1, 2020, as an unwritten, month-to-month tenancy, contrary to Section 13 of the *Act*. Rent was currently established at an amount of $1,326.00 per month and was due on the first day of each month. A security deposit of $650.00 was also paid.

It is undisputed that the Notice was served to the Tenant by being attached to his door on June 16, 2023. The following are all the reasons the Landlord served the Notice:

- The Tenant or a person permitted on the residential property by the Tenant has:
  - seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, or
  - put the landlord's property at significant risk.
- The Tenant has not done required repairs of damage to the unit/site/ property/park.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The effective end date of the tenancy was noted as July 31, 2023, on the Notice.

The Landlord advised that there have been multiple written warnings issued to the Tenant to pick up his dog’s feces from the lawn, and then hose down the grass after. As well, he submitted that the dog would also dig holes in the yard, which he also warned the Tenant to fix. He testified that the yard was provided for the use of the upstairs’

tenant, and that this person locked the gate so that the dog could not get into the yard and damage it any further, as she did not want to get evicted for this damage. He stated that the Tenant would continually ignore these warnings to pick up the feces and repair the lawn, and that he did not respond to any of these warnings. However, he advised that the Tenant sent an unprompted email on June 12, 2023, indicating that it is his expectation that the Landlord would be responsible for picking up the Tenant's dog's feces and for repairing and maintaining the lawn. He referenced the documentary evidence submitted to support his testimony.

The Tenant advised that he is not always home, so he cannot control where his dog defecates. However, he testified that he picks up the dog's feces daily and that he hoses down the lawn afterwards. He stated that he has re-seeded the lawn and that his dog has not dug any holes in the yard. He submitted that the Landlord's pictures clearly depict fresh dog feces, which would support his claim that he does not leave it there for a considerable amount of time. As well, he stated that the damage to the lawn was done by the Landlord's own construction.

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.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that 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 a lawful right or interest of the landlord or another occupant, or
(iii) put the landlord's property at significant risk.

(e) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain]*, within a reasonable time.*

(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.

I find it important to note that 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. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the consistent evidence before me, I am satisfied that the Landlord has warned the Tenant multiple times about picking up his dog's feces. Moreover, there is documentary evidence of pictures of multiple piles of dog feces that appear to be consistent with the Landlord's warning letters of feces not being picked up in a timely manner and being left to pile up over a significant period of time. While the Tenant claimed to have picked up the dog's feces daily, I am doubtful that this was the case given the combative tenor of the Tenant's eventual email response to the matter on June 12, 2023.

Furthermore, given that there is evidence of multiple warning letters reminding the Tenant to pick up the feces or else face possible eviction, there is no evidence that the Tenant ever responded to the Landlord about these warnings. In my view, had the Tenant truly complied with these warning letters, it does not accord with common sense

and ordinary human experience why he would not respond accordingly to the Landlord that he has done so, and then request that the Landlord stop issuing these warning letters. I find that the above issues cause me to doubt the reliability of the Tenant's testimony, and as a result, I prefer the Landlord's evidence on the whole as it is more consistent and logical.

As such, I am satisfied that the Landlord has sufficiently substantiated that the Tenant has engaged in an ongoing series of unacceptable behaviours and actions that would justify ending the tenancy due to a serious jeopardization of the health or safety or a lawful right or interest of the Landlord or another occupant. As I am satisfied that there is sufficient compelling and persuasive evidence before me to support the issuance of this Notice, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, an Order of Possession is granted to the Landlord that takes effect on **August 31, 2023, at 1:00 PM** after service on the Tenant.

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

Based on the above, the Landlord is provided with a formal copy of an Order of Possession effective on **August 31, 2023, at 1:00 PM** after service on the Tenant. Should the Tenant or any occupant on the premises 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: August 9, 2023

Residential Tenancy Branch