



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued November 30, 2011.

All parties gave affirmed testimony at the Hearing.

The Landlord asked for an Order of Possession in the event I decided to dismiss the Tenant's application to cancel the Notice.

Issue(s) to be determined

- Should the Notice be cancelled or upheld?
- If the Notice is cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

The rental unit is located in a hotel. There is no written tenancy agreement. The Tenant has lived in the hotel since January 20, 2010. Monthly rent is \$450.00, due on the first day of each month.

On September 29, 2011, the Tenant was successful in cancelling an earlier Notice to End Tenancy for Cause because the Dispute Resolution Officer found insufficient evidence that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Tenant was ordered to discontinue using the rear fire door unless it was used in response to an actual emergency requiring use of the fire door to exit the building.

The Landlord's agent and witness gave the following affirmed testimony:

The Landlord's agent testified that she served the Tenant with the Notice on November 30, 2011, by posting the Notice to the Tenant's door.

The Landlord's agent testified that there is ongoing trouble with the Tenant yelling in the common areas of the rental property, and disturbing other occupants late at night. The Landlord's agent testified that on November 30, 2011, the Tenant was so loud that another occupant (HS) had to sleep in his car. The Landlord provided a written

statement from HS. The Landlord's agent testified that on December 14, 2011, there was another incident involving HS and that when HS asked the Tenant to be quiet, the Tenant waived a stick at him.

The Landlord's agent stated that since the Hearing on September 29, 2011, things have escalated. She testified that she received complaints about the Tenant using an electric saw in the common hallway at 10:00 p.m. She stated that on November 24, 2011, the Tenant went from his room on the first floor to the third floor, with his camera, and was involved in an altercation with other occupants, including the Landlord's witness GG, on the third floor. The Landlord's agent testified that the other occupants asked the Tenant to stop taking the pictures, but he would not and a physical fight ensued. She stated that the police were called and attended that night. The Landlord's agent testified that the police called her at 2:00 a.m. to view the video surveillance taken on November 30, 2011, and it is her opinion and the police's opinion that the Tenant and his friend BG started the altercation. The Landlord's agent testified that BG was the first person to take a swing at the other occupants. No charges were laid against any person involved.

The Landlord testified that the Tenant was in the habit of taking photographs, without consent of the people being photographed. She stated that the Tenant posted one of these photographs in the common area, with the word "goof" beside the photograph.

The Landlord's witness GG testified that, since the last Hearing, he has observed the Tenant using the fire escape door and leaving the back door propped open. The witness stated that the "back door" he referred to is the fire door. He stated he has also seen him escorting people into the building through the back (fire) door. The Witness testified that three weeks ago, another occupant complained to him that the Tenant kept him awake screaming and yelling and that he had to sleep in his car that night so he could get up and go to work in the morning.

The Landlord provided a written statement, signed by 5 other occupants, indicating that they had seen the Tenant letting other people in the back door on September 29, 2011.

The Landlord's agent stated that other occupants in the building are upset because they don't perceive her to be doing enough to provide them with quiet enjoyment. She stated that she has an obligation to other occupants and that the Tenant's actions are affecting their health. She stated that one other occupant has already moved out because of the Tenant's actions. The Landlord stated that she offered to move the Tenant to another room in the hotel, but he has alienated too many people in the building.

The Tenant and his witness gave the following affirmed testimony:

The Tenant testified that the Landlord's and the other occupants' claims are exaggerated. He denied bullying HS or threatening him with a stick. The Tenant stated that HS was drunk on December 14, 2011, and invited the Tenant to fight. The Tenant

denied ever yelling in the hallways. He stated that if he was disturbing HS, all HS had to do was call 911. The Tenant submitted that HS did not have to sleep in his car.

The Tenant denied propping open the fire door. He testified that GG lived on the third floor and did not have an unobstructed view of the fire door from his room. The Tenant stated that no one, other than he, can see the door because of its location.

The Tenant stated that three weeks ago BG (who lives on the 3rd floor) came down to see him and stated, "they're doing it again". The Tenant testified that GG and three other people were smoking in the building and making noise, which disturbed his friend BG. The Tenant testified that he grabbed his camera and went upstairs with BG to tell the other occupants to be quiet. He stated that someone hit his camera, knocking it out of his arms and that someone called the police.

The Tenant testified that when the police had not arrived at 9:00 p.m., he and BG went back upstairs with the camera. He stated that he got cold-cocked by one of the other occupants before the police got there. He testified that the police left at 1:00 a.m.

The Tenant testified that he carries a camera with him because for the last six months there has been a concerted effort to have him thrown out from the building. He stated that he gets abuse and he returns it.

The Tenant admitted to posting a photograph of the Landlord's agent's father in the common area, but denied writing "goof" near the photograph. The Tenant stated that the Landlord's agent's father had taken a run at him and so he took the photograph. He stated he thought it was a nice picture, so he posted it.

The Tenant's witness BG testified that on November 24, 2011, at 8:30, he went to see the Tenant to see if he would witness GG and three other people smoking in the building. The witness stated that the Tenant suggested they bring along his camera. The witness testified that GG charged at the Tenant and "kicked me in the ass". He stated that the police were called at 8:42 p.m. The witness testified that they needed fresh batteries for the Tenant's camera and went to BG's room. The witness testified that at 9:00 p.m., GG and the others came towards them uttering homophobic slurs and threats. He stated that at 11:15 p.m., he went to the Tenant's room. The police were still not there and he and the Tenant went back upstairs with the camera. The witness stated he called 911 at that time because GG came out with a bat.

Analysis

The Landlord seeks to end the tenancy because the Tenant has "engaged in **illegal activity** that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the Landlord; and for breach of a material

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

In a situation where a Tenant seeks to cancel a Notice to End Tenancy for Cause, the onus is on the Landlord to provide sufficient evidence, on the balance of probabilities, that the tenancy should end for the reasons given on the Notice.

The Tenant's position is that the other occupants are causing trouble and that he just retaliates to their actions. He stated that he posted pictures in the hallway because he thought they were nice pictures. I do not find this statement to be credible and find on the balance of probabilities that he posted the picture of the Landlord's agent's father in an attempt to provoke the Landlord's agent. He did not dispute that the other occupants had not given permission for him to take the pictures, or that they had actually demanded he stop taking the pictures. It is the **Tenant's behavior that is at issue here, not the other occupants' behavior**.

I find insufficient evidence of **illegal activity** on the Tenant's part. From the evidence provided it would appear that there may have been a consensual fight between the Tenant and the occupants on November 24, 2011, which was fuelled by the Tenant's refusal to stop photographing the other occupants against their wishes.

I accept HS and five other occupants' written statements with respect to seeing the Tenant allow other people into the building and propping open the fire door. With respect to the second reason on the Notice for ending the tenancy, I find that there is sufficient evidence that the Tenant continues to allow people entry to the building via the fire door, contrary to the Dispute Resolution Officer's Order (written notice).

The Dispute Resolution Officer wrote, in part, "I advised the tenant that if I were to allow his application to cancel the landlord's 1 Month Notice, I would require him to abide by the landlord's requirement that the tenant not allow people to enter the rental building by way of the rear fire door. The tenant agreed to do so and also agreed that he and his visitors would only access the rental building by the front door. He also agreed to only allow tenants into the building and not visitors of other tenants." I find that the Dispute Resolution Officer's order and subsequent agreement of the Tenant to abide by that Order, constitutes a "material term" of the tenancy agreement.

For the reasons outlined above, I dismiss the Tenants' application to cancel the Notice to End Tenancy.

Section 55(1) of the Act states:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the testimony of the parties, I am satisfied that the Notice was posted on the Tenant's door on November 30, 2011. Pursuant to the provisions of Section 90 of the Act, the Notice was deemed to have been received three days after posting. Therefore, I find that the Tenant received the Notice on December 3, 2011, and that the effective end-of-tenancy date is January 31, 2012.

Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., January 31, 2012.**

Conclusion

The Tenants' application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., January 31, 2012.** This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: December 19, 2011.

Residential Tenancy Branch