



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice to End Tenancy?

Background and Evidence

This single room occupancy, month to month tenancy began on July 18, 2011, monthly rent is \$375.00 payable on the first day of the month and the tenant paid a security deposit of \$187.50 at the beginning of the tenancy.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause, pursuant to section 47 of the Act. The Notice was dated May 30, 2012, and was served via posting on the door on that date, listing an effective end of tenancy date of July 1, 2012.

Section 90 of the Act states that documents served in this manner are deemed delivered three days later. Thus the tenant was deemed served the Notice on June 2, 2012.

Under the Act, a notice under section 47 must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. **Thus I note the**

effective move out date indicated on the Notice is ineffective as the date the tenant was deemed to have received the Notice was June 2, 2011. Pursuant to Section 53 of the Act, the effective move out date automatically corrects to July 31, 2012.

The cause listed on the Notice alleged the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health, safety or physical well being of another occupant or the landlord.

Landlord's testimony-The landlord testified and supplied documentary evidence that the tenant has created significant, repeated noise disturbances in the residential property, including provoking fights and arguments with other tenants, slamming doors and screaming up and down the hallways.

Additionally, the landlord submitted that the tenant confronts other tenants, accusing them of being drug dealers, gangsters and thieves. The landlord described the tenant's behaviour as increasingly aggressive and confrontational.

The landlord stated that the tenant has accused her and her staff of being drug dealers, and the situation escalated such that the tenant was given repeated written and verbal warnings.

The landlord's witness, a tenant support worker who is on staff, testified she was required to break up a fight between the tenant and another tenant, and said that the tenant goes up and down the hall accusing people of drinking and using drugs. One of the fights was the result of the tenant accusing another tenant of being a drug dealer.

The witness stated that the tenant has called her a drug dealer.

The landlord's evidence included the written warnings to the tenant, daily log entries, written statements from the witness and other staff members and the letter written by the tenant to the landlord.

Tenant's testimony-The tenant denied interfering with other tenants and creating noise disturbances; however if other people confront him, he "shouts his slogan" as was his right as a "drug activist."

The tenant said that society has to help people with drug and alcohol problems and that he has offered his services to help people with addictions. Despite his offer of help, the tenant has not seen any real progress in other tenant's behaviour.

The tenant said that the other people with drug and alcohol problems should exercise more to get healthy and that he could help with that.

The tenant stated that the other tenants in the building are confronting him, as he is a drug activist and some of his neighbours are gangsters; however, the tenant says that he has only offered his help to staff and other tenants.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Once the tenant made an application to dispute the Notice issued pursuant to section 47 of the Act, the burden of proof is on the landlord to prove the cause listed on the Notice, in this case that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health, safety or physical well being of another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant significantly interfered with and unreasonably disturbed another occupant of the residential property.

In reaching this conclusion I find the landlord and landlord's witnesses provided credible testimony which led me to find that on a balance of probabilities the behaviour of the tenant, which created the noise complaints in the first place, has continued unabated since the first written warning. I was particularly influenced by the compelling testimony of the tenant himself, which I find confirmed the landlord's version of events.

The tenant stated that he did not interfere with other tenants, yet his further testimony and the letter he wrote to the landlord suggested that he believes he is on a mission to cure people of drug and alcohol addictions, leading to confrontations with them as was his right as a drug activist.

I find the tenant's use of the phrase "I just voice my slogan" substantiates that he takes his activism to a level higher than one of quiet concern.

I also find the overwhelming weight of the landlord's credible testimony and well documented evidence led me to conclude that the landlord has proven the causes listed on the Notice.

Considering the totality of the evidence, I find that the tenant has significantly interfered with and unreasonably disturbed the landlord and other occupants and I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply.

Under Section 48 of the Act, if a tenant's application to cancel a Notice has been dismissed, I may grant the landlord an order of possession.

As the landlord has made a verbal request for an order of possession, I grant the landlord an Order of Possession effective on the corrected effective move out date on the Notice, July 31, 2012, at 1:00 p.m., after service on the tenant.

I have enclosed an order of possession with the landlord's Decision. This order is a final, legally binding order, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply with this order.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord is granted an order of possession, effective on July 31, 2012.

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: June 28, 2012.

Residential Tenancy Branch