



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Preliminary Issues

At the outset of the hearing the Tenant's Advocate indicated that he was at the hearing to assist the Tenant. He stated that although he was also a tenant in this building he was not a witness to any incidents involving the Tenant nor does he have firsthand knowledge of what transpired leading up to the Tenant being served a 1 Month Notice to end his tenancy. He confirmed that he was not involved in the filing of the application, preparation of the evidence or the service of any documents.

The Tenant clarified his request for an adjournment during which his Advocate assisted in the explanation by asking the Tenant questions. The Tenant indicated he had filed a complaint with the Ombudsman's Office and had requested information from his tenant file held by the Landlord through BC Freedom of Information and Protection of Privacy. He confirmed that these matters were not directly related to specific incidents which the Landlord was relying upon as the reasons for issuing the Notice to end tenancy.

After careful consideration of the aforementioned and of the Tenant's written submission I found the request for adjournment not to meet the criteria set out in the *Residential Tenancy Branch rules of Procedure* as they were not directly related to the matters before me. Accordingly, the request for adjournment was denied pursuant to # 6.6 of the *Residential Tenancy Branch rules of Procedure*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a 1 Month Notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to ask the other party questions. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy be upheld or set aside?
2. Should the Landlord be granted an Order of Possession?

Background and Evidence

The Tenant filed his application for dispute resolution on September 10, 2012 and submitted into evidence copies of: the 1 Month Notice to end tenancy for cause dated September 4, 2012, a written submission to request an adjournment, a request for access to records under the BC Freedom of Information and Protection of Privacy, e-mails from BC Housing indicating the Tenant's abusive behaviour to their staff during phone calls, and letters from BC Housing to the Tenant.

The Landlord submitted 48 pages of evidence which included, among other things, copies of: the tenancy agreement, chronological list of events from January 1, 2006 to September 2012, letters written to the Tenant, incident reports, a corrected Dispute Resolution Services Decision dated February 6, 2012, and witness statements pertaining to an incident that took place on August 14, 2012.

The parties agreed they entered into a tenancy for subsidized rent that began on January 1, 2006. Rent is currently \$357.50 due on the first of each month and the Landlord is currently holding a security post in trust in the amount of \$150.00.

The Landlord affirmed that he has been employed at this location since October 2007 and has had to deal with the Tenant's intoxicated behaviour all along. He stated that the Tenant's behaviour is threatening and he makes people feel unsafe. The Landlord pointed out that over the years he has had several talks with the Tenant to try and work through the issues and then when that did not work he began to write warning letters and then finally issued the first notice to end tenancy in 2011.

The Landlord noted that they attended a dispute resolution hearing in December 2011 however the Notice was cancelled because they did not provide enough evidence to prove on a balance of probabilities that the tenancy should end.

The Landlord asserted that the Tenant's behaviour has continued to escalate which resulted in the August 14, 2012 incident involving delivery personnel whereby the Tenant displayed threatening, inappropriate behaviour.

Each Witness provided affirmed testimony relating to the incident of August 14, 2012 and confirmed the Tenant began yelling and swearing at two delivery drivers who were delivering food to the rental building kitchen. They said that the Tenant came down from his sixth floor apartment and appeared in the kitchen and continued to yell and swear at the delivery personnel.

The kitchen manager called security and the Landlord was sent to attend the situation. The Landlord stated that when he arrived the Tenant was outside swearing and he was standing in the delivery ramp area restricting the delivery personnel's access to their truck. After numerous requests to have the Tenant leave the area the Landlord said he finally took out his phone and called 911 which caused the Tenant to leave. When the police arrived the Landlord said he took them to the Tenant's unit and watched the police officer explain to the Tenant that he could be arrested for this type of behaviour.

The Witnesses and the Landlord submitted that this incident was very upsetting for the delivery personnel and the kitchen staff. They were concerned for the safety and well being of all the people involved.

The Landlord submitted that after this incident they issued another 1 Month Notice and attempted on many occasions to serve the Tenant. When they were unable to serve him they decided to hang onto the Notice and serve him when he came to the office to pay his rent. The service was conducted on September 4, 2012.

Upon review of the Notice the Landlord confirmed that the Notice was issued for the following reasons

:

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*

The Landlord submitted that when the Tenant is intoxicated his behaviour is unpredictable. During the incident in question the Tenant was yelling, swearing, confrontational and obviously intoxicated which placed everyone involved at risk. He argued that as an employer and a landlord he is required by law and Worksafe BC to

provide a safe work environment for all of his staff which includes staff he has contracts with to deliver their supplies. He contends that all employees and contractors of the Landlord conduct business as agents for the Landlord and therefore the reasons selected on the Notice are applicable.

After each Witness and the Landlord provided their testimony I asked the Tenant and his Advocate if they had any questions for them. They both declined to ask the other parties questions.

The Tenant was then given an opportunity to provide his testimony which he began by stating he suffers from bi-polar and sleep disorders. He confirmed that he got upset and yelled at the delivery drivers on the day in question. When asked if he swore he stated that he may have. He submitted that he takes pills for his disorders and confirmed that he becomes intoxicated when he drinks. He acknowledged that he has been given previous warnings and that he attended dispute resolution in December 2011 to dispute a previous notice that was also issued in response to his behaviors. When asked why he continues to display these inappropriate behaviours the Tenant said, "life is life".

At the conclusion of the hearing I informed the parties that I would be upholding the Notice. At this time the Landlord confirmed that he had submitted his evidence and attended the hearing to request that an Order of Possession be issued so the Tenant would have to move.

It was at this time that the Advocate requested the opportunity to ask the Landlord questions. I explained that I would give him leave to ask questions only if they were pertinent to the issues before me. The Advocate began to ask questions that were not directly related to the issues so I interjected and asked if he had anything further to ask that related to the issues. He answered no. The hearing was concluded at that time.

Analysis

I have carefully considered the aforementioned and the documentary evidence submitted by each party.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act with an effective date of **November 1, 2012**. I also find that the Notice was served upon the Tenant in a manner that complies with the Act. The Notice was issued listing the following reasons:

The Tenant or a person permitted on the property by the tenant has:

- *Significantly interfered with or unreasonable disturbed another occupant or the landlord*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord*

Upon consideration of all the evidence presented to me, along with the totality of events resulting from the Tenant's behavior throughout this tenancy, I find the Landlord had valid reasons for issuing the Notice. Therefore the Notice is upheld and the Tenant's application to set aside the Notice is dismissed.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective **November 1, 2012**, the effective date of the 1 Month Notice.

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

I HEREBY ISSUE the Landlord an Order of Possession effective **November 1, 2012, at 1:00 p.m.** This Order is legally binding and must be served upon 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 *Residential Tenancy Act*.

Dated: October 03, 2012.

Residential Tenancy Branch