



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This was the reconvened hearing based upon the landlord's successful application for a review of the decision of December 5, 2012, which was conducted upon the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"). In that Decision of December 5, 2012, the tenant's application was granted and the two 1 Month Notices to End Tenancy for Cause (the "Notice") issued by the landlord were set aside.

The landlord filed his application for review, the application was granted and in a Decision dated December 18, 2012, an arbitrator suspended the Decision of December 5, 2012 until the Review Hearing was conducted. This is the Review Hearing.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. In explanation to the parties, it was explained that the original hearing was being conducted anew, on the tenant's application seeking cancellation of the two 1 Month Notices to End Tenancy for Cause.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue-The landlord issued to the tenant a 1 Month Notice to End Tenancy for Cause October 15, 2012; however this Notice was on an outdated form no longer

used by the Residential Tenancy Branch (“RTB”). The tenant filed an application in dispute of that Notice.

The landlord subsequently served the tenant with another 1 Month Notice to End Tenancy for Cause (the “Notice”), which was on the correct form. I therefore have allowed the tenant to amend his application to seek cancellation of the subsequent 1 Month Notice issued by the landlord and the hearing proceeded on the merits of the landlord’s subsequent Notice issued on November 14, 2012.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Should the original Decision of December 5, 2012, be confirmed, varied or set aside?

Background and Evidence

The undisputed testimony shows that this single room occupancy, month to month tenancy began in October 2010 and monthly rent is \$450.00.

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 October 15, 2012, but was served by leaving it with the tenant November 14, 2012, listing an effective end of tenancy date of November 30, 2012.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to December 31, 2012.

The causes listed on the Notice alleged the tenant has allowed an unreasonable number of occupants in the rental unit and that the tenant has engaged in illegal activities that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Landlord's evidence in support of the Notice to End the Tenancy -The landlord submitted that at the time the tenancy started, he was aware of pending criminal charge against the tenant, that being possession of child pornography, and that the tenant was on probation; however, he agreed to rent the single room occupancy unit to the tenant pending the tenant not repeating that behaviour.

The landlord submitted that in October 2012, the police attended the residential property and the rental unit to arrest the tenant due to new charges of possession of child pornography and probation violation.

The landlord submitted that the tenant's illegal activities committed in the rental unit and on the residential property are affecting the security, safety and well-being of himself and other occupants as he has young grandchildren visiting frequently and due to other tenants at the residential property residing there with young children.

As well, the landlord submitted that the police attendance to the residential property for making arrests has the same impact of adversely affecting all tenants' sense of safety and security.

As to the additional cause listed on the Notice, the landlord said that the tenant often times has an excessive number of friends visiting the rental unit, smoking and consuming drugs, passed out on the floor.

Tenant's evidence in support of his Application and in response to the Notice-The tenant did not deny that new possession of child pornography and probation violation charges had been laid against him or that the charges were true, but submitted that he has not yet been convicted of the new charges.

The tenant also submitted that this type of offense would not impact his "neighbours" as his criminal charge pertained to using the internet.

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 tenant has allowed an unreasonable number of occupants in the rental unit and that the tenant has engaged in illegal activities that has, or is likely to

adversely affect the quiet enjoyment, security, 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 engaged in illegal activities that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

In reaching this conclusion I find the landlord provided credible evidence which led me to find that on a balance of probabilities the most recent charges of possession of child pornography and probation violation have created a realistic apprehension by a reasonable person for the safety and security of their children residing in or visiting the residential property.

I find a reasonable person would fear for the safety and security of their children as the tenant appears to have continued engaging in activities, possession of child pornography, which have a direct, harmful impact on children, for which new charges have been laid and probation for the first charges have allegedly been violated.

I do not accept the evidence of the tenant that his neighbours would not be affected or that they would not be aware of the activities, due to the newspaper article printed in the local paper, submitted by the landlord, giving the tenant's name and latest charges, making secrecy impossible.

Considering the totality of the evidence, I find that the tenant has engaged in illegal activities that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply.

Under Section 55 (1) 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 two days 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 for enforcement as an order of that Court should the tenant fail to comply with the terms of the order.

As I have found that the landlord submitted sufficient evidence of the ground as stated above, I have not addressed the landlord's allegation that the tenant has allowed an unreasonable amount of occupants in the rental unit as it is not necessary that the landlord prove every cause listed, only one cause.

As I have dismissed the tenant's application for dispute resolution and granted the landlord an order of possession for the rental unit, I set aside the Decision of December 5, 2012.

Conclusion

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

The landlord is granted an order of possession, effective two days after service upon the tenant.

The Decision of December 5, 2012 is set aside.

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: January 22, 2013

