



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding British Columbia Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing.

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 Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-At the beginning of the hearing, the tenant and his advocate engaged in a conversation, which resulted in the tenant informing the advocate that he no longer wanted the advocate's representation. The advocate exited the telephone conference call hearing prior to the beginning of the oral evidence.

Preliminary issue #2-At the beginning of the hearing, both parties were instructed to have their witnesses leave the room each were in, far enough away that no witness could hear any testimony. Both parties acknowledged when the witnesses departed.

When the tenant requested to have his witness testify after lengthy testimony, he immediately spoke to the witness, which led me to conclude the witness was present with the tenant during the course of the hearing. I therefore excluded that witness from testifying.

Preliminary issue #3-The tenant listed two individuals as landlord; however the landlord on the tenancy agreement and in the Notice to end the tenancy is as listed in the style of this cause. I have therefore amended the landlord's name to reflect the name listed as above.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The undisputed testimony shows that this tenancy began on May 1, 2009, and the tenant's monthly rent contribution is currently \$328.00.

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 January 15, 2013, listing an effective end of tenancy date of February 28, 2013. The landlord said it was delivered to the tenant on that date, by leaving it with the tenant.

The causes listed on the Notice alleged the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord and has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord, in support of the Notice, said that they have received several written complaints from other tenants of the multi-unit residential property, including threats to those other tenants and unreasonable noise disturbances.

The landlord said that the behaviour of the tenant has caused the police to be called to the premises.

The landlord also said that the tenant smeared feces on the door and all around the outside walls one of the complaining tenants. Additionally, one of the other tenants received a note which informed that tenant that two men would be looking for her when she was walking her dog.

Witness #1, who lives next door to the tenant, stated that the extreme noise disturbances by the tenant caused her to call the police to the residential property. Additionally, the witness said the tenant and his friend were walking all around the premises bragging about spreading the feces on the other tenant's door.

Witness #1 said she is afraid of the tenant and his friend.

Witness #2, who lives on the first floor of the residential property, stated that it was her door and walls on which the tenant smeared the feces. The witness said that the note

threatening her physical safety was pushed under her door, claiming that it was the tenant who did so.

The witness said that she confronted the tenant about the note, asking him if that was a threat. The replay, according to the witness, was "We'll see."

In response, the tenant said that he never threatened the other tenants or smeared the feces. The tenant claimed that the landlord was on a vendetta against him and that he has been a good tenant for four years.

I then questioned the tenant, and asked him if he smeared the feces. The tenant said that he did not. I asked him if he knew who did smear the feces and he said no. I reminded the tenant that he promised to tell me the truth, and after a slight hesitation, the tenant admitted that his friend smeared the feces on the other tenant's door and walls. The tenant also admitted that his friend slipped the note under the other tenant's door.

The tenant did say that when he learned what his friend did, he made him leave.

The landlord's relevant evidence included the Notice, a copy of the note given to the other tenant, pictures of the feces smeared door and walls, and the tenancy agreement.

Analysis

Based on the relevant oral and written 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 causes listed on the Notice.

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 or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord and has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In reaching this conclusion I relied on the tenant's own statements that a person he permitted on the property smeared feces on the door and walls of another resident as well as writing a note to the other resident in the residential property, threatening that person's safety.

I find a reasonable person would fear for their safety and security and would be unreasonably disturbed by such behaviour.

Considering the totality of the evidence, including the tenant's own admission, I find that the landlord has substantiated the causes listed on the Notice 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 request for vacant possession of the rental unit, I grant the landlord an Order of Possession effective 2 days after service of the Order upon 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. Costs of such enforcement may be recoverable from the tenant.

Conclusion

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

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

Dated: March 12, 2013

Residential Tenancy Branch

