



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened on the tenants' application of March 8, 2013 seeking to have set aside a one-month Notice to End Tenancy for cause served on February 27, 2013 and setting an end of tenancy date of March 31, 2013.

Issue(s) to be Decided

Should the Notice to End Tenancy of December 28, 2012 be set aside or upheld?

Background and Evidence

This tenancy began on May 27, 2012. The tenant's share of rent is \$375 per month and the landlord holds a security deposit of \$250 paid at the beginning of the tenancy.

The rental building, known as "First Place," is a 129-unit facility with a mandate to provide stable subsidized housing for formerly homeless tenants and those with addiction, chronic health or mental health challenges.

While the present application was made by the tenant, when application is made to challenge a Notice to End Tenancy, the Rules of Procedure provide that the landlord lead evidence as to why the notice was issued.

The rental building's Residential Manager, hereinafter, "the landlord," gave evidence that the Notice had been served after a number of increasingly serious incidents that had come to greatly distress other tenants and staff of the building.

Most recent of them prior to the application involved an incident on or about February 21, 2013 in which two other residents of the building had been unlawfully confined in the tenant's rental unit for a period over four hours.

The landlord stated that investigating police officers advised him that two tenants had been bound in chairs and tortured including one of the victim fingers being cut in during his tormentor's threat to cut it off. Police told the landlord the victims had been repeatedly choked to unconsciousness and beaten, one's tongue was cut and teeth knocked out, and both were severely beaten by the subject tenant's associates. A female victim was taken to a safe house for two weeks after the incident.

The landlord stated that the applicant tenant and a male friend of the applicant were taken into custody, but the tenant was later released. Police advised the landlord that they believed the incident occurred because the subject tenant thought the victims others had stolen drugs from her. During the investigation, police removed "proceeds of crime," drugs and a weigh scale from the rental unit but said they were unable to charge the tenant because the crime scene had been contaminated by the presence of other persons.

The female tenant stated that she was out at the time and that the accused must have been admitted to her rental unit by her cat sitter.

The landlord provided a summary of other reported incidents as follows:

August 5, 2012 –shortly after midnight, female guest appears in lobby and showed staff the tenant's entry card; she was advised she should be escorted by tenant. Both return to admit male guest who was aggressively told by tenant that he did not have to identify himself for the overnight sign-in sheet as requested by staff member.

October 12, 2012 – tenant had cable service attend. Female staff member was unable to locate the key to the communications room, so the provider postponed. Tenant called staff member, called her a profanely vile name and hung up.

October 18, 2012 – report by the landlord of learning of male banned from the building going to the subject rental unit. Contacted at the unit, the male said he kept returning to the building after having been banned because he runs errands for the tenant. Police took him into custody on outstanding warrants and removed break and enter tools from his possession.

December 12, 2012 – report to landlord of complaints about disturbance of others by the tenant including bouncing ball, banging on walls at late hours, multiple guests every night, guests intimidating other tenants, etc.

December 29, 2012 – report to landlord regarding two apparent guests of the tenant standing outside her door in the entry controlled building. They said they were waiting for the tenant and had been let in by another tenant; they were later found loitering by the elevator and escorted from the building. Shortly after, tenant arrived with the two and a third guest and two bicycles, and ignored the staff member's request to take the bikes to the designated storage area.

The landlord described another incident in which the tenant told him she feared being shot by a known drug dealer to whom she owed money and who had been seen driving around the rental building for two days. The tenant stated she had not so told the landlord who consulted his notes and remained firm in his conviction that the conversation took place.

The landlord also stated that he had been told the tenant had been involved in the sale of a rifle through another tenant on the third floor of the building, but he did not have first-hand knowledge of the matter.

The landlord had met with the tenant on occasion, once in the company of her advocate, in an attempt to make the tenancy succeed to no avail .

Analysis

Section 47(1)(d)(ii) of the *Act* provides that a landlord may issue a one-month Notice to End Tenancy for cause in circumstances in which the tenant or the tenant's guest has, "seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant."

I find on the preponderance of evidence that the tenant and her guests have put other occupants at risk and have jeopardized the lawful rights of the landlord. I find it highly probable that the tenant was a party in some way to the incident of unlawful confinement. I prefer the evidence of the landlord that she told him she feared she would be shot by the encircling drug dealer over a debt, despite her denial that the conversation took place.

Even in matters of lesser concern such as refusing to properly store her bicycle or to cooperate with a guest sign in, or in calling the staff member disgusting names over the cable service incident demonstrates a serious pattern of non-compliance and a complete lack of consideration of others.

Therefore, I found that the Notice to End Tenancy was lawful and valid and declined to set it aside.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's request when an application to set aside a notice to end tenancy is dismissed.

I find that the landlord is entitled to the Order of Possession to take effect at 1 p.m. on April 16, 2012 as requested by the landlord.

Conclusion

The tenants' application is dismissed on its merits without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on April 16, 2013.

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: April 04, 2013

Residential Tenancy Branch