



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated April 2, 2013 be cancelled?

Background and Evidence

The rental unit is a room in a single room occupancy hotel in Vancouver. The tenancy began approximately one year ago. The landlord's representative testified that the tenant was personally served with a one month Notice to End Tenancy for cause on April 2, 2013. The cause alleged was that the tenant has allowed an unreasonable number of occupants in the unit; that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord.

The landlord's representative testified that he personally served the tenant with the Notice to End Tenancy on April 2, 2013, but the tenant claimed several times that he lost the Notice to End Tenancy and the landlord's representative provided the tenant with additional copies of the Notice to End Tenancy,. The last occasion when he gave the tenant a copy was on April 25, 2013. The tenant said that the first occasion when he received the Notice to End Tenancy was on April 25th and he filed his application to dispute the Notice on May 2, 2013. Because the evidence as to service is disputed, I have proceeded on the basis that the tenant filed his application to cancel the Notice to End Tenancy within the time allowed under section 47 (4) of the *Residential Tenancy Act*.

The landlord submitted documentary and video evidence in support of the Notice to End Tenancy and the landlord's representative testified at the hearing as to the grounds for seeking to end the tenancy. He said that there have been problems with tenant and with his guests dating back to August, 2012. On August 17, 2012 one of the tenant's visitors threw a knife in the vicinity of a community health nurse in attendance at the rental property. The visitor then approached the nurse with the knife in his hand. The landlord's representative distracted the visitor and the nurse was able to get away from the situation. The nurse submitted a letter dated May 7, 2013; she recounted the August 17th incident and supported the request to evict the tenant. She said the continued presence of large number of visitors in the tenant's room caused the Health clinical tenant support team to increase the number staff members in the rental property for safety reasons and this has resulted in a decrease in the in the hours of care provided to the residents.

The landlord's representative testified about other violent incidents involving the tenant and occurring in his rental unit. On February 2, 2013 one of the tenant's visitors assaulted another person inside the tenant's rental unit. The police were called and the aggressor was detained. Another incident happened on March 27th, 2013. A visitor to the tenant's room assaulted another guest, hitting him with a metal pipe or crow bar. The victim was bleeding profusely from the head and police and ambulance services were called. On May 15, 2013 there was a fight in the rental unit between two of the tenant's guests. One guest threatened to attack the other with a hammer. The landlord's staff broke up the fight and the police were called.

The landlord also submitted video surveillance footage recorded on May 23, 2013. The video shows the tenant, with other individuals, dragging an unconscious person, apparently suffering from a drug overdose, out of his rental unit down the corridor to a washroom.

The landlord submitted visitor logs and the landlord's representative testified that there is high visitor traffic to and from the rental unit and the visits made to the tenant are very short in duration. The landlord's representative testified that based on the volume of traffic and the nature of the visits he has strong reasons to believe that the tenant is a drug dealer and also that he is fencing or dealing in stolen bicycles. He said that many of the tenant's associates are very violent people who have been barred from the building because of violent incidents.

The landlord submitted several breach letters given to the tenant on August 21st, 2012, February 4, 2013 and April 2, 2013. The landlord also submitted incident reports and a letter from a resident of the rental property complaining about violence caused by visitors to the tenant's unit.

The tenant submitted a written statement with his application for dispute resolution. He said that he was unaware that the landlord or other tenants had any problems with the tenant or concerning his guests because he: "was not given any verbal reprimands or

notices informing me of such and was under the impression and any issues that had been brought to my attention were dealt with without incident and to my understanding satisfactorily with all parties involved.”

The tenant said that he has acted to ban disruptive or “over intoxicated” people from attending his unit. The tenant blamed the landlord for excessive visitors and suggested that the landlord’s staff did not adequately control visitors to the rental property. The tenant said that he is not engaging in any criminal activity, either selling drugs or dealing in stolen bicycles. He said that people come to the rental unit with bicycles because the tenant is attempting to start a legitimate bicycle repair business and is trying to learn how to fix and rebuild bicycles. The tenant said that the drug overdose victim was an unwanted guest who overdosed before coming to the tenant’s room. The tenant said he dragged the guest out of his room because he was vomiting in the rental unit. He said in his written statement that: “I always make sure my visitors are well behaved and do not disturb other tenants.”

The landlord pointed out the several written warnings and breach letters given to the tenant. The landlord noted that the tenant and the tenant’s unit has become a high traffic focus of violence and disruption in the building and it is clear that the numerous warnings have had no effect, given a recent violent episode on May 15, 2013 and the unconscious drug overdosed person that the tenant dragged from his room on May 23, 2013. The landlord requested that I issue an order for possession effective May 31, 2013.

The tenant submitted late evidence consisting of letters of support. It was submitted on May 28, 2013 and not received by me until May 31, 2013, after the hearing. The landlord was not given an opportunity to comment on the evidence and I have not considered it in making my decision.

Analysis and conclusion

The landlord has provided extensive evidence including video evidence and the direct testimony of the landlord’s representative, who has personal knowledge of several violent incidents in the tenant’s rental unit. The landlord also submitted a written statement from a Vancouver Coastal Health nurse concerning the August 17th incident.

The tenant’s evidence that he always makes sure that his visitors are well behaved is simply not credible; nor is the tenant’s evidence that he was not given any verbal reprimands or notices informing him of problems. The landlord has documented the troubling events and provided copies of the breach letters given to the tenant.

I find that the landlord has ample grounds for the Notice to End Tenancy given to the tenant. I find that the Notice to End Tenancy dated April 2, 2013 should not be cancelled and I dismiss the tenant’s application without leave to reapply. The Notice to End Tenancy purported to end the tenancy effective May 2, 2013, but, as the landlord’s

representative acknowledged at the hearing, the earliest date that the Notice to End Tenancy could be effective is May 31, 2013 and, pursuant to section 53 of the *Residential Tenancy Act*, the Notice is automatically corrected to be effective on that date.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

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: May 31, 2013

Residential Tenancy Branch