



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NELSON & DISTRICT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant Advocate said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on September 16, 2013. Based on the evidence of the Tenant’s Advocate, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with representative for all parties.

During the Hearing the Tenant’s Advocates said the Tenant did not attend the hearing because he was unable to function in these kinds of situations due to his mental health situation.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on September 20, 2005 a month to month tenancy. Rent is \$375.00 per month and there is a \$24.00 utility charge payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$137.50 on October 3, 2005.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated September 3, 2013 by posting it on the door of the Tenant’s rental unit on September 3, 2013. The Effective Vacancy Date on the Notice is October 6, 2013. The Tenant is living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety or lawful right of another occupants or the landlord. The Landlord said there have been many incidents with the Tenant over the years, but over the last year problems with the Tenant have become

unmanageable. The Landlord said there are two main reasons for the Notice to End the Tenancy. The first is the Tenant is leaving needles and drug paraphernalia in the common areas and in public spaces and the second is they fear for the physical safety of other tenants and persons who are working in the rental complex.

The Landlord provided a letter from Canada Post with indicates mail service to the area was suspended because of safety concerns about drug needles in the post boxes. As well the Landlord testified that the post office has now removed the post boxes from the area because of safety concerns relating to drug needles. As well the Landlord provided a letter and photographs from a family visiting the rental complex formally complaining about the Tenant and his drug paraphernalia in the common areas of the rental complex. The family said they were concerned for the safety of their brother who lives next to the Tenant. The family said in their letter the Tenant leaves drug paraphernalia in the hall ways and in the mail area of the rental complex.

In addition the Landlord provided a witness to testify with regards to their claims about the Tenant. The Witness T.L. is an Outreach worker who does work with troubled or people at risk. The Witness T.L. testified that she saw the Tenant throw needles and drug paraphernalia into the hall way of the rental complex. This incident is documented in an incident report dated August 31, 2013 and signed by the Witness T.L.

In addition the Witness T.L. testified that the Tenant threatened to kill her and other residents in the rental complex during this same incident and the threats by the Tenant to the Witness and other tenants are documented in the incident report of August 31, 2013.

The Landlord also presented a Witness J.B who is the maintenance worker and repair man for the rental complex. Witness J.B said that he has found the situation at the rental complex has worsened over the last year. He said he is finding drug paraphernalia on the grounds and in the common area and he believes it is from the Tenant although he has not actually seen the Tenant put needles in the public area. The Witness J.B. also said he witnessed an incident with the Tenant where the Tenant used a kitchen knife to slash a greenhouse owed by another tenant. In the Witness's written statement he says the police came and the police disarmed the Tenant and dealt with the situation.

The Landlord included 18 pieces of written evidence in their submission. There is 3 letters supporting unacceptable behaviour of the Tenant, photographs of drug paraphernalia outside the door of the Tenant's unit, 4 incident reports involving the Tenant, 4 written submissions from persons working at the rental complex with concerns about the Tenant's behaviour things, 2 email indicating problems with the Tenants behaviour and 1 voice mail transcription from Canada post about needle problems in the post boxes.

The Landlord said they have tried to work with the Tenant but the situation is becoming unmanageable and the Landlord is concerned for the safety of other tenants and persons who work at the rental complex. Further the Landlord acknowledged the Tenant's difficult situation, but the Landlord said the safety of the other tenants and workers is the issue here. The Landlord said this is a tenancy dispute not a care facility dispute.

The Tenant's Advocates said the Tenant is challenged with a number of mental health problems and societal issues. The Tenant's Advocates continued to say that the Landlord must prove the reasons on the Notice to End Tenancy are valid and the Advocate said that she does not believe the Landlord has proven the allegations. The Tenant's Advocates said the Landlord's claim that the Tenant is putting needles in the common area is mostly hearsay and they have not seen the Tenant discard needles or drug paraphernalia into the common or public areas. This area is known for this kind of activities and other people could very easily be responsible for the drug paraphernalia in the public area. The Tenant's Advocate provided a witness S.P. to testify on this. The Witness S.P. said he does the needle exchange for the area and has been working with the Tenant for 8 or 9 years. The Witness S.P. said mostly the Tenant has been good to work with, but in the last year he has found partially full Sharp Boxes of used needles are being returned by the Tenant. The Witness S.P. said this does not mean the Tenant is discarding needles in public places, but may be using other Sharp Boxes to discard his used needles. As well the Witness S.P. said he has not found the Tenant to be difficult to work with and there have been no incidents between them. The Witness S.P. said this area is a hot spot or problem area for publically discarded drug paraphernalia.

The Landlord's Advocate continued to say that the 18 points the Landlord has indicated do not meet the burden of proof required to evict the Tenant. The Tenant's Advocate said the evidence submitted by the Landlord proves that drug paraphernalia is in common areas of the rental complex and public area, but the Landlord has not proven that the Tenant is responsible for it.

With regards to the incident with the Outreach Worker the Tenant said he would kill the Outreach worker and other tenants in the rental complex the Tenant's Advocate said the Tenant's medication was being adjusted and this is a mental health issue which is not normal for the Tenant. The Tenant was taken to hospital and treated after the incident.

The Tenant's Advocates said in closing that the Landlord has not met the burden of proving the Landlord's allegations and most of the issues in this situation are a result of the Tenant's mental health condition. The Advocates said this is a very serious situation because if the Tenant is evicted there is probably no place for the Tenant to go, which may result in the Tenant becoming homeless and his mental health issues becoming more serious. The Advocates said this is a special circumstance and they requested the Notice to End Tenancy be Cancelled for the health of the Tenant. The

Advocates continued to say that if the Tenant is unsuccessful they are requesting until November 30, 2013 for the Tenant to move out.

The Landlord said in closing this is a tenancy dispute not a care facility dispute and they feel they have to insure the safety and protection of the other tenants and the people who work in the rental complex. The Landlord said the Tenant has proven that he has put the safety and health of the other tenants and people who work at the rental complex at risk. Therefore the Landlord requested an Order of Possession for October 31, 2013, which is the earliest date the 1 Month Notice to End Tenancy for Cause would allow the Landlord to have possession of the rental unit.

Analysis

It is apparent from the testimony and evidence that this is a difficult situation for all the participants. I do find it disturbing that the Tenant chose not to appear at the hearing to participate in his defence. The Tenant's Advocates said he is not good in these kinds of situation so he did not want to appear. This results in a limited defense for the Tenant as the Tenant did not recount his side of the incidents. The Landlord provided ample amount of evidence and 2 witnesses that were directly involved in the Tenant and the incidents with the Tenant. These firsthand accounts are compelling testimony. Specifically the testimony of the Outreach Worker T.L. who was threatened with bodily harm by the Tenant and who witnessed the Tenant discarding needles and drug paraphernalia into the hall way. This testimony is compelling and it is documented and it adds creditability to the others witnesses J.B.'s testimony of violent behaviour of the Tenant and the letter from the family about the needles and drug paraphernalia outside the Tenant's door of his unit. Consequently I accept the Landlord's evidence and testimony that the Tenant has created an unsafe situation for other tenants and workers in the rental complex and possibly a health issue by discarding drug paraphernalia in common areas of the rental complex. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk. I find the Landlord has established grounds that the Tenant has **seriously jeopardized the health or safety of other tenants and worker in the rental complex**. Therefore I find the 1 Month Notice to End Tenancy for Cause to be valid and held in full effect.

Further I find that the Tenant's Advocates have not established grounds for the Notice to End Tenancy for Cause dated September 3, 2013 to be cancelled. I dismiss the Tenant's application without leave to reapply.

In addition pursuant to section 55 of the Act I award an Order of Possession to the Landlord with an effective date of 1: 00 p.m. on October 31, 2013. It should be noted the effective vacancy date of the Notice to End Tenancy dated September 3, 2013 is October 6, 2013 which is incorrect and pursuant to section 53 of the Act the effective vacancy date is automatically changed to the correct date which is October 31, 2013.

Conclusion

The Tenants application is dismissed without leave to reapply.

An Order of Possession effective at 1:00 p.m. on October 31, 2013 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia

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 29, 2013

Residential Tenancy Branch