



Dispute Resolution Services

Page: 1

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 was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

An agent for the Landlord and the building manager who served the Notice appeared for the hearing. The Tenant also appeared for the hearing.

The Landlord’s agent confirmed receipt of the Tenant’s Application and Notice of Hearing documents which were personally served in accordance with the *Residential Tenancy Act* (the “Act”).

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence and to cross-examine the other party, and make submissions to me.

Preliminary Issues

The Landlord provided written evidence prior to the hearing which was served to the Tenant and the Residential Tenancy Branch in accordance with the Rules of Procedure.

The Tenant provided three pages of written evidence which were served to the Landlord and the Residential Tenancy Branch on July 11, 2014, outside of the time limits stipulated by the Rules of Procedure. The Tenant explained that her written evidence consisted of statements from other residents and a character reference but provided no reason why this had been submitted late.

As the Tenant’s written evidence was submitted late in accordance with the Rules of Procedure, I did not consider this evidence during the hearing.

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

At the start of the hearing, the Landlord's agent made an oral request for an Order of Possession for the rental suite and testified that they had not accepted rent for the month of July, 2014 as they did not want to re-instate the tenancy as a result of issuing the Notice.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy started on August 1, 2011 for a fixed term period until May 31, 2012, after which time the tenancy continued on a month to month basis. The Tenant pays subsidised rent for a rental suite in a multi floor building complex in the amount of \$328.00 on the first day of each month. No security deposit was requested from the Tenant for this tenancy. A written tenancy agreement was completed and signed by the parties along with a 'Crime Free Housing' addendum.

The building manager testified that he attended the rental suite on May 16, 2014 to serve the Notice and knocked on the Tenant's door; the Tenant refused to answer the door and the building manager explained to her that he was there to serve the Tenant the Notice. As a result, the building manager posted the Notice to the Tenant's door. However, the Tenant testified that she received the Notice on May 26, 2014 which was the day she made the Application to dispute it.

The Notice was provided in written evidence and details the expected date of vacancy as June 30, 2014; the Notice shows that the reasons for ending the tenancy is because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and the Tenant has seriously jeopardised the health and safety or lawful right of another occupant or the Landlord.

The Landlord's agent presented the following evidence that led up to the Tenant being served the Notice.

In April, 2013 the Tenant started to cause problems in the building and as a result, the police were called out multiple times in April, June and August, 2013.

The Landlord began to take these issues more seriously after they received a complaint letter on October 9, 2013, which was provided in written evidence, from a resident residing two floors up from the Tenant complaining that the Tenant had stolen her purse.

The building manager testified that the Tenant was caught on the video surveillance stealing the resident's purse and as a result, the police were called. However, the police took no further action because the resident did not want to press charges.

The Landlord's agent then referred to an e-mail dated November 12, 2013 provided in written evidence, from one of the building managers who writes that the Tenant had attacked one of the residents and as a result the police were called; a police reference number was provided on the e-mail.

The Landlord's agent presented a letter from the theft victim written on November 15, 2013 stating that nothing was being done by the management with regards to the Tenant's assaults on the residents.

The Landlord's agent referred to another e-mail dated March 30, 2014 provided in written evidence from one of the building managers, who writes that the Tenant had attacked another resident of the building over the weekend and as a result the police were again called.

The Landlord testified that the Tenant's behaviour gradually got worse, particular during the long weekend in April, 2014. The Landlord's agent wrote the Tenant a letter, which was provided in written evidence, and states that she has been in receipt of ongoing complaints of constant noise and fighting coming from the Tenant's rental suite and referred to the fact that police had been called multiple times to the Tenant's suite over the long weekend.

The Landlord's agent then referred to a complaint letter written by a resident of the building in which the resident writes "Every day and night she's banging on the walls Throwing cups at neighbours doors and disrupting the floor."

In the resulting breach letter issued to the Tenant on April 24, 2014 the Landlord's agent writes to the Tenant stating "I have also received complaints about the fighting and yelling between you and your neighbour. This has been going on for quite some time and the peaceful enjoyment of others has been seriously disturbed." The letter goes on to warn the Tenant that this behaviour is not acceptable and will not be tolerated and may result in a Notice being issued to the Tenant.

The Landlord's agent testified that the Tenant's behaviour continued and on May 6, 2014 the Landlord's agent received two written complaint letters from two other neighbouring residents in the building who called police because of the Tenant's mental health condition. One of the residents writes in the letter that one minute the Tenant is nice and the next minute she is swearing, threatening and slamming doors. The other resident writes that he witnessed the Tenant yelling and pushing other people in the elevator while in the company of her baby.

The Landlord's agent also referred to another e-mail from one of the building managers who writes that another resident has complained of the Tenant stealing his laundry; however, the building surveillance was not working and this could not be verified.

The Landlord's agent testified that she received reports from the building managers that the residents had reported the Tenant to police for uttering death threats while wielding a knife. As a result, the Landlord's agent testified that she had no choice but to issue the Tenant with the Notice.

The Tenant admitted to stealing the resident's purse and submitted that this was a mistake and that it would not happen again.

The Tenant testified that she has mental health issues and is under the care of mental health staff and that recently her medication for her anger and depression issues has been changed and there have been no further incidents since this time.

When the Tenant was asked for a response to the Landlord's evidence relating to the events that led up to her being issued with the Notice the Tenant disputed the residents' accounts and stated that it was the residents who wrote these letters for this hearing that were the aggressors in the events described.

The Tenant submitted that residents want her to engage in sexually activity and that she is the victim of sexual and verbal abuse in the building by these residents because she keeps to herself.

Analysis

Having examined the Notice, I find that the content and the manner in which it was served to the Tenant, complied with the Act and the effective date of vacancy detailed on the Notice is also correct. I also find that the Tenant disputed the Notice within the time limit afforded under Section 47(4) of the Act.

When a Landlord issues a Tenant with a Notice for the reasons documented above, the Landlord must prove, on the balance of probabilities, that at least one of the reasons provided on Notice is sufficient grounds to end the tenancy.

In this case, I find that the Landlord's agent has presented an overwhelming and sufficient amount of written and verbal evidence that this tenancy should be ended for the reasons on the Notice.

In coming to this conclusion, I considered the fact that the evidence to support the Notice presented by the Landlord's agent not only came from one particular resident in the building but from multiple residents who all write about similar disturbances being created by Tenant in the building. Therefore, on the balance of probabilities, I accept the Tenant has significantly and unreasonably disturbed other residents in the building and the Landlord.

The Tenant provided insufficient evidence to dispute the Landlord's evidence and I accept the Landlord's evidence is far more compelling than the Tenant's evidence. The Tenant explained that she is receiving treatment for mental health issues associated with anger issues and therefore, I find that these issues were likely the source of the incidents described in the Landlord's evidence.

However, it is not sufficient for me to cancel a Notice based on the fact that the Tenant is receiving treatment for her mental health issues as the Landlord has proved the reasons why the Notice was issued to the Tenant and the Notice is upheld. The Landlord's agent indicated that they do not want to continue this tenancy with the Tenant as they fear for the safety of other residents and have a moral obligation to take action for issues that I find have been ongoing for a long period of time.

Based on the foregoing, I find that the combined evidence in this case, does not disclose sufficient grounds for the Notice to be canceled. Therefore, the Notice is upheld.

Section 55(1) of the Act states that if a Tenant makes an Application to dispute a Notice and the Notice is upheld, the arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing.

As the Landlord made an oral request, I grant the Landlord an Order of Possession. As the effective date of vacancy on the Notice (June 30, 2014), has passed and the Landlord has not accepted rent for July, 2014, the order is effective two days after service on the Tenant.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application to cancel the Notice.

The Landlord is granted an Order of Possession which is effective 2 days after service on the Tenant. This order must be served onto the Tenant and if the Tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court 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: July 16, 2014

Residential Tenancy Branch

