



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on November 4, 2014, to cancel a Notice to end tenancy issued for cause.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice issued October 26, 2014, be upheld or cancelled?
2. If upheld, did the Landlord appear and make an oral request for an Order of Possession.

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on August 17, 2010. The Tenant was required to pay rent of \$553.00 on the first of each month and on or before August 17, 2010, the Tenant paid \$200.00 as the security deposit.

The Landlord submitted documentary evidence which included, among other things, copies of: two emails pertaining to an incident involving the Tenant that occurred on August 25, 2014; a warning letter dated August 27, 2014 issued to the Tenant regarding the August 25, 2014 incident; emails dated October 24, 25, and 26 which relate to incidents with the Tenant leaving the oven / toaster oven turned on and unattended; and

a written email complaint dated October 26, 2014, from another tenant which indicates that the Tenant "physically hit" him when he turned off the toaster oven.

The Landlord testified that he resides on the main level with his family and the four rooms in the basement are rented to four separate tenants. Each tenant has their own individual tenancy agreements to occupy a bedroom and to be tenants in common with access to the common areas which include a shared kitchen and bathroom. The Landlord maintains the common areas.

The Landlord submitted that there were primarily two main issues with this Tenant which were as follows: (1) the Tenant is aggressive, violent, confrontational, and abusive towards other tenants and the Landlord; and (2) the Tenant's actions of leaving cigarettes burning and attempting to heat the common space by leaving the toaster oven on to be a fire hazard.

The Landlord submitted that on August 24, 2014 the Tenant became confrontational and stepped in his personal space and swore at him after the Landlord approached him about a fire that had started in the cigarette butt can. The Landlord stated that he was concerned by the Tenant's actions at that time but was able to work with the Tenant at that time. Then on October 26, 2014, the Landlord said he was woken up by another tenant who said the Tenant assaulted him by punching him in the face after he had turned off the toaster oven. The Landlord stated that both Tenants were told they would be evicted and the other tenant has since mutually agreed to move out.

The Landlord submitted that it was the accumulation of the aforementioned events that caused him to issue the Tenant a 1 Month Notice on October 26, 2014. The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The Tenant testified and initially stated that all of the allegations were fabricated. He argued that he was not a fire threat and noted that there have been no police or fire incident reports.

After a brief submission, the Tenant confirmed that he had been leaving the toaster oven on, unattended, for the duration of the timer, to add heat to the common area as

he was cold. He confirmed that he was operating the oven without food inside and that he had an altercation with the other tenant. He stated that he put his hand on the other tenant's shoulder and attempted to move him out of the way when a physical fight began.

While explaining the incident that had occurred in August 2014 the Tenant confirmed he had spoken with the use of swear words and argued that he was referring to the other tenant when he stated get the @\$% out of here. The Tenant then began to repeat his testimony and when I attempted to redirect him the Tenant became upset and started arguing that his accusers were not present at the hearing for him to face and ask questions.

As the Tenant continued his testimony it was evident that he was starting to become confrontational. At that point I interjected and offered the parties the opportunity to settle these matters with the possibility to mutually agree to end the tenancy at a date into the future to allow the Tenant time to find alternate accommodations. It was at that point that the Tenant became very aggressive, stating that he would not be bullied or threatened and then he started issuing threats about seeing me again, seeing me in court, being in Supreme Court. At that point I interrupted and stated that it was okay if he did not want to settle these matters and I would make my decision based on his application; to which the Tenant replied by swearing at me.

At that point I instructed the Tenant to disconnect from the hearing and I turned to the Landlord to ask if there was anything further. The Landlord made an oral request for an Order of Possession effective January 31, 2015, and the hearing was concluded.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice and therefore the Notice is upheld and the Tenant's application to set aside the Notice is dismissed. I make this finding, in part, due to the

undisputed evidence that the Tenant had been involved in a physical altercation with another tenant, which disturbed the quiet enjoyment of the remaining two tenants. Both tenants who were involved in that physical altercation were evicted. The Tenant also confirmed the incident which occurred in August 2014 where he was aggressive towards the Landlord when demanding the Landlord have the other tenant get out of there. Furthermore, the Tenant's behavior in this hearing supported the Landlord's evidence that the Tenant is aggressive, confrontational, and can be violent towards others.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective January 31, 2015.

Conclusion

I hereby dismiss the Tenant's application, without leave to reapply.

The Landlord has been issued an Order of Possession effective **January 31, 2015, after service on the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: December 19, 2014

Residential Tenancy Branch

