



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, ERP, RP, LRE, OPT, AAT, LAT, AS, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated October 29, 2014, ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to the landlord to make emergency repairs for health or safety reasons, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- an Order of Possession for the rental unit, pursuant to section 54;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests, pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld, pursuant to section 65.

The landlord and his agent, GB (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had authority to speak on his behalf at this hearing.

The tenant's witness, JW, testified at this hearing and both parties were given an opportunity to ask questions and to cross-examine the witnesses. The landlord's witnesses, RT and JS, testified at this hearing and both parties were given an opportunity to ask questions and to cross-examine the witnesses.

The landlord's agent testified that the landlord personally served the tenant with the 1 Month Notice on October 29, 2014. The tenant testified that he received it on October 30, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the 1 Month Notice. As there is conflicting evidence about the date that the tenant received the 1 Month Notice, I am prepared to accept that the tenant received it on October 30, 2014.

The tenant testified that he served the landlord with the application for dispute resolution hearing notice ("Application"), by posting it to the front lobby door, approximately two weeks prior to this hearing. Although this method of service delivery is not one that is allowed under section 89 of the *Act*, the landlord's agent confirmed receipt of the tenant's Application and was notified of this hearing. Based on the sworn testimony of the parties, I find that the landlord received the tenant's Application and that there would be no denial of natural justice in proceeding with this hearing and considering the tenant's application.

The tenant testified that he did not serve the landlord with his two written evidence packages, received by the Residential Tenancy Branch on December 4 and 10, 2014. The landlord's agent confirmed that he did not receive any evidence from the tenant. During the hearing, I advised the parties that I would not be considering the tenant's two written evidence packages, as they were not served upon the landlord, as required by Rule 3.14 of the Residential Tenancy Branch Rules of Procedure.

The landlord's agent testified that the landlord served the tenant with his written evidence package on December 2 or 3, 2014. The tenant acknowledged receipt of the landlord's evidence and confirmed that he had reviewed the evidence prior to this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's evidence, as declared by the parties.

Preliminary Issues

During the hearing, the tenant withdrew all of the claims in his application, except for the claims for more time to cancel the 1 Month Notice and to cancel the 1 Month Notice.

During the hearing, the landlord made an oral request for an order of possession.

Issues to be Decided

Is the tenant entitled to an extension of the time limit to dispute the 1 Month Notice?

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that this tenancy began on September 27, 2010 for a fixed term of one year, after which it transitions to a month to month tenancy. Monthly rent in the amount of \$500.00 is payable on the first day of each month. A security deposit of \$250.00 was paid for this tenancy, which the landlord continues to retain. The tenant continues to reside in the rental unit. A written tenancy agreement was provided with the landlord's evidence, but the rent and security deposit amounts were incorrect on the agreement, and were corrected by the landlord's agent at the hearing, as stated above. The tenant's rental unit is a garage suite, which has been renovated, in a house.

In his 1 Month Notice to end the tenancy on November 30, 2014, the landlord provided 8 different reasons, including:

Tenant is repeatedly late paying rent.

Tenant has allowed an unreasonable number of occupants in the unit/site

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.*

In accordance with subsection 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. As noted above, I accepted that the tenant received the 1 Month Notice on October 30, 2014. The tenant filed his application for dispute resolution on November 10, 2014, which is the next business after it was due on Sunday, November 9, 2014. Accordingly, the tenant filed within the ten day limit under the *Act*. As such, the tenant's application for more time to make an application to cancel the 1 Month Notice, is moot.

The landlord stated that he did not have any proof of illegal activity by the tenant, including police reports or criminal convictions against the tenant. He stated that the police had attended the rental unit and the witness, JS, confirmed that the police had attended at the property as recently as 3 weeks ago, inquiring about the tenant.

The landlord stated that the tenant had been late paying rent almost every month during his tenancy. The tenant denied this. The landlord did not provide any documentary proof of this fact, as he did not issue receipts for the tenant's cash rent payments.

The landlord stated that the tenant or a person permitted on the property by the tenant, caused extraordinary damage to the rental unit. The tenant indicated that his former girlfriend, AS, kicked his door in. The landlord provided a picture of the tenant's door with damage and holes around the doorknob, where the landlord said the tenant had nailed the door in order to secure it back in place.

The landlord said that the tenant had an unreasonable number of 2 extra occupants in his rental unit. The tenant was only permitted to reside there alone, given that it was a bachelor suite and he was the only tenant listed on the tenancy agreement, as an occupant. The tenant denied that any other occupants were residing at his rental unit.

The landlord stated that the tenant or a person permitted on the property by the tenant significantly interfered with, unreasonably disturbed and seriously jeopardized the health and safety of the landlord or another occupant. The landlord provided 4 written complaint letters, ranging from October to December 2014, from 2 occupants, RT, who lives in the basement unit beside the tenant, and JS, who lives above the tenant on the main floor of the house. The letters state that the tenant risked the safety of these occupants and their children. The letters note that the tenant has guests visit his rental unit at all hours of the day and these guests consume drugs while sitting on the stairway of the common property. The letters also state that the tenant and his guests engage in prostitution, leave needles on the common property in the front driveway area by the fence, and cause disturbances by being noisy, loud and threatening to RT and JS. The noise includes yelling and loud music which occurs late at night and early in the morning. The police have attended the rental unit on a number of occasions, for these reasons, according to these letters.

Both of the landlord's witnesses, RT and JS, testified at the hearing and stated that the statements were written by them and were true. The landlord provided photographs of these needles left at the front of the property. The witness, JS confirmed that she found the needles beside her vehicle in the driveway area, took photographs of the needles, and has seen the tenant's guests sitting on the stairs near the area where the needles were found. The landlord stated that there is a senior's home next door and that these seniors do not dump needles at the tenant's rental unit, as the tenant claims.

The tenant testified that his former girlfriend, AS, was a "sex worker" and he was helping her by allowing her to stay at the rental unit with him, previously. He testified that the witness statements of JS and RT were a complete fabrication by both of them. He denied that police ever attended the rental unit to speak to him. He denied that his guests consumed drugs, engaged in prostitution or left needles at the rental property. He denied causing noise or disturbance to the other occupants. He stated that the witness RT was slandering his reputation for no reason.

The tenant's witness, JW, previously lived at the rental property on the main floor of the house. He stated that the tenant was a good person and that the witness RT was gossiping and the

landlord believed her stories. He stated that RT's guest stole his rings when he was previously residing at the property. JW testified that he initially complained to the landlord about the tenant consuming drugs and smoking on the rental property, when he was first living there, but that the tenant has mental health issues and is a nice person now.

Analysis

While I have turned my mind to all of the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

The landlord stated that the tenant significantly interfered with, unreasonably disturbed, and seriously jeopardized the health and safety of the other occupants, RT and JS, of the rental property.

Section 28(b) of the Act protects a tenant's right to quiet enjoyment and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline #6 states that frequent and ongoing interference, if preventable by a landlord who stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. An example of such serious interference may include unreasonable and ongoing noise. A landlord can be held responsible for the actions of other tenants if the landlord is aware of a problem and failed to take reasonable steps to correct it.

I find that the landlord provided sufficient evidence that the tenant significantly interfered with and unreasonably disturbed other occupants and the landlord. The documentary and testimonial evidence provided by RT and JS discuss the tenant's ongoing loud noises, music and television, as well as yelling and arguing, during early morning and late night hours. This is a pattern of behaviour which has caused a loss of quiet enjoyment to these other occupants, causing them to lose sleep and fear for their safety. The tenancy agreement states that there are to be no parties or excessive noise after 10:00 p.m. and that "music and television audio levels" are to remain at "comfortable levels" for the other occupants on the premises, a failure of which may result in a written notice to vacate the premises. One of the complaints from JS, discusses loud music from the tenant's rental unit, causing the walls to shake between 4:30 and 5:00 a.m.

I find that the landlord provided sufficient evidence that the tenant seriously jeopardized the health and safety of the other occupants of the rental property. All three witnesses, including the tenant's own witness, JW, testified that the tenant has been involved in drug activity at the rental unit. Needles have been left in common areas of the property, accessible by all

occupants and their young children. Drug activity occurs on common stairways at the rental unit. The tenant stated that he had a sex worker who was previously staying at his rental unit. The occupants have complained about prostitution activity at the rental unit. These activities are illegal and specifically prohibited by the tenancy agreement, where it states that the “tenant agrees to no trading or using of drugs” and there is a strict enforcement of “no prostitution” or “illegal drug activity” at the residential premises.

The tenant’s actions have significantly interfered with the landlord’s ability to maintain a crime-free, safe building where other occupants can have a right to quiet enjoyment. The landlord has provided documentary evidence, in the form of complaint letters from other occupants, regarding this behaviour. The letters discuss young children who live at the rental property and have been exposed to the tenant’s guests knocking on the doors of their rental units and the police attending the rental property to respond to complaints about the tenant. The tenant’s actions have caused the other occupants to fear for their own welfare and safety. It has risked the safety of these other occupants, as they are exposed to harmful substances, illegal activities and various people who may harm them. It also significantly interferes with their right to quiet enjoyment and safety. It is a pattern of behaviour which has been ongoing for a long period of time.

On a balance of probabilities and considering all of the evidence as outlined above, I find that the landlord provided sufficient evidence that the tenant has seriously jeopardized the health and safety and significantly interfered with and unreasonable disturbed the other occupants of the rental property.

Accordingly, I dismiss the tenant’s application to cancel the 1 Month Notice. I find that the landlord is entitled to a 2 day order of possession against the tenant.

Conclusion

The tenant’s application to cancel the landlord’s 1 Month Notice, dated October 29, 2014, is dismissed.

I uphold the landlord’s 1 Month Notice, dated October 29, 2014. As the effective date on the 1 Month Notice has passed, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant’s remaining applications are withdrawn, as follows:

- authorization to change the locks to the rental unit;
- an order to the landlord to make repairs to the rental unit;
- an order to the landlord to make emergency repairs for health or safety reasons;

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided;
- an order to suspend or set conditions on the landlord's right to enter the rental unit;
- an Order of Possession for the rental unit;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld.

The tenant's application for more time to make an application to cancel the 1 Month Notice, is moot.

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: January 2, 2015

Residential Tenancy Branch

