



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC COMMUNITY RESOURCES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause.

The tenant and landlords agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Notice?

Background and Evidence

The parties agreed that this month to month tenancy started on February 10, 2014. Rent for this unit is \$375.00 per month due on the 1st of each month. This building is provided for tenants under the funding of BC housing and is a two year program to assist homeless people or people at risk of being homeless to transition to independent or market living. Each resident must be 30 days clean of drugs and alcohol. There are no drugs allowed other than those prescribed by a tenant's doctor and no alcohol is allowed on the premises.

SE testified that there have been a pattern of incidents involving this tenant. Up until September, 2014 the tenant was a good tenant. From September many incidents occurred and the tenant was identified of having both alcohol and marijuana on the premises. A warning letter has been provided to the tenant dated September 12, 2014 and informs the tenant that his actions have put his tenancy at risk. On December 03 and December, 04, 2014 the tenant was again identified as having alcohol and marijuana on the premises and the tenant was abusive towards staff and other residents. Second and third warning letters were sent to the tenant on December 04 and December 05, 2014 concerning these incidents.

On January 05, 2015 there was a physical confrontation between this tenant and another resident and the tenant then lit fire crackers and put them under that tenant's door. Staff have written up several incident reports concerning the tenant's behaviour towards staff and other residents. The tenant was then served with the One Month Notice to End Tenancy on January 15, 2015 by posting it under the tenant's door. This Notice has an effective date of February 15, 2015 and provided two reasons to end the tenancy as follows:

- 1) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,**
- 2) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

Another letter was sent to the tenant detailing the landlord's review of the incidents involving the tenant. Members of staff have documented that the tenant has been seen giving alcohol to another resident and a bottle of whisky was seen in the tenant's room. Even after the first warning letter was sent to the tenant explaining that further incidents may jeopardize the tenancy the tenant has continued to be involved in confrontations, has been abusive towards staff and other residents and has continued to have alcohol on the premises.

The landlord testified that even after the One Month Notice was served upon the tenant the tenant was involved in another altercation on March 07, 2015 when the tenant was abusive towards staff and other residents. The RCMP was called and the tenant was duly arrested. The

landlord testified that there was an incident when the tenant was in a confrontation with another resident and kicked the other resident's vacuum down the stairs. Another incident occurred yesterday when another physical altercation broke out between this tenant and another resident. The police were again called and removed the tenant from the building.

The landlord requested that the One Month Notice be upheld and orally requested an Order of Possession for two days after service. The landlord testified that they will continue to assist the tenant to find alternative housing and will delay the service of the order of Possession at this time; however, if any further incidents occur the Order of Possession will be served upon the tenant whether or not the tenant has found alternative accommodation.

The landlord has provided copies of the unusual occurrence reports written by staff and documenting the incidents the tenant has been involved in.

The tenant agreed that he has received the warning letters. The tenant disputed that he has had alcohol or drugs on the premises and disputed that he smokes marijuana. The tenant testified that he was with some other people who were smoking marijuana and the landlord assumed it was the tenant. The tenant testified that the landlord does not have a system in place for the tenant to dispute the warning letters. The tenant testified that he was accused of threatening another resident; however, that resident later said the tenant had not threatened him.

The tenant testified that he has had a couple of beers off the premises and as this is referred to as a 'damp facility' residents are allowed to drink or smoke a joint off the premises. The tenant testified that he is on a high dose of medication from his doctor which may make it appear that he has been drinking or smoking marijuana. The tenant testified that he did not fail the urine test which he had a year ago and would have likely had another test done when he went into hospital for surgery on January 12, 2015.

The tenant testified that on January 12, 2015 the resident across the hall to the tenant was smoking meth and playing loud music. The tenant agreed that he had enough of the noise so had an altercation with that resident and then put a fire cracker under that resident's door. The tenant testified that he was arrested by the police but no charges were made. The tenant referred to the incident that occurred yesterday and testified that he was cooking in the

communal kitchen when another resident accused the tenant of taking some communal food. That resident put the tenant in a head lock and slammed the tenants head into the microwave. The police did arrive and they took the tenant to the hospital and then on to the tenant's fathers.

The tenant agreed that since he has been on the higher dose of medication that his behaviour has been difficult. The tenant testified that he has an appointment this week with his psychiatrist and he is hoping his dosage can be changed. The tenant testified that when staff members see the tenant they assume the tenant is under the influence of drink or drugs.

The tenant disputed that he has given alcohol to another resident or that he has had any alcohol in his rom. The staff member may have mistaken two bottles of Listerine for whiskey. The tenant agreed that he had made some non-alcoholic cider and given some of that to another resident. The tenant disputed that he got into another altercation with a resident or that he had kicked the resident's vacuum down the stairs.

The landlord asked the tenant if the tenant initiated the fight that occurred yesterday. The tenant responded that he did not and he was only taken off site by the police to calm down. The tenant agreed that he 'went off 'at the police. The tenant agreed that he has a short fuse but this should be sorted out after he sees his doctor and his medication is lowered.

AM testified that she has spoken to staff and other residents about the tenant's concerns and no one has disputed that the tenant uses alcohol. These comments were consistent. One member of staff informed AM that he had removed empty alcohol bottle from the tenant's room.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Having considered both party's evidence and testimony I find the landlord's evidence is consistent and corroborates the landlord's agents' verbal testimony. The landlord's evidence is more compelling concerning the incidents involving the tenant's behavior towards staff and

other residents and as to the use of alcohol on the premises. The tenant has been given ample opportunity to correct his behavior to avoid jeopardizing his tenancy; however, the tenant's behavior has continued by getting into further confrontations even after the One Month Notice was served. The tenant was fully aware of the code of ethics that each tenant was expected to observe during their tenancy. Yet the tenant had alcohol in his room and empty alcohol bottles were removed from his room by a member of staff. This is clearly in breach of a material term of the tenancy and the tenant failed to correct this even after written notice to do so.

The tenant argued that his behavior was made worse due to the high dosage of prescribed drugs, yet the tenant appeared to be aware of the behavior patterns these drugs may have caused or contributed towards, yet did not seek help from a medical person to remedy this issue. Consequently, I am satisfied that the landlord has sufficient cause to end the tenancy and I dismiss the tenant's application to cancel the One Month Notice.

Section 55(1) of the *Act* provides that if a tenant's application to dispute a Notice to End Tenancy Due is dismissed, and the landlord makes an oral request for an Order of Possession at the hearing, then the director must issue an Order of Possession of the rental unit to the landlord.

The landlord's agent made an oral request for an Order of Possession for the rental unit at the hearing. The effective date of the One Month Notice is February 15, 2015. This date has been amended to February 28, 2015 pursuant to s. 53 of the *Act* as the Notice has to provide one clear month and was served on January 15, 2015. As this date has since passed I grant the landlord's agents oral request and issue an Order of Possession to the landlord.

Conclusion

The tenant's application is dismissed without leave to re-apply.

The landlord has been issued an Order of Possession effective **two days** after service upon the tenant pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in possession of the rental unit and does not relinquish that possession to the

landlord then the Order may be filed 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: March 30, 2015

Residential Tenancy Branch

