



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC, CNC

Introduction

This hearing was convened in response to applications by the landlord and the tenant, filed under the Residential Tenancy Act (the “Act”).

The landlord’s application seeks an order as follows:

1. For an order of possession.

The tenant’s application seeks an order as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”), issued on March 11, 2015.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel the Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The tenant acknowledged receipt of the landlord’s evidence.

Preliminary matter

At the outset of the hearing the tenant requested an adjournment. The tenant stated that they want full disclosure from the landlord as they believe the landlord is in possession of a video recording of the alleged incident. The landlord’s agent stated that they are not relying on any video evidence and the tenant was informed of that prior to the hearing. The agent stated any video that may have captured the event no longer exists.

I have considered the rule 6.4 of the Residential Tenancy Branch Rules of Procedures, the criteria for granting an adjournment. In this case the tenant acknowledged receiving the landlord’s documentary evidence. The tenant seeks further disclosure of a video; however, I find I cannot order evidence be submitted that no longer exists. Therefore, I deny the tenant’s request for an adjournment.

Issues to be Decided

Should the Notice issued on March 11, 2015, be cancelled?

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began late November/December 2015. Rent payable is determined by BC Housing and the tenant's current monthly portion payable on the first of each month is the amount of \$390.00. The tenant paid a security deposit of \$195.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on April 30, 2015.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and

The landlord's agent testified that they had previously issued a notice to end the tenancy which the tenant's application to cancel the notice was heard on February 5, 2015. The agent stated that the tenant's application was granted on the basis that they not served any warning letters on the tenant. The agent stated that the decision also provided a formal warning to the tenant. Filed in evidence is a copy of the decision dated February 5, 2015.

The decision of the Arbitrator reads in part,

"Given the above, I find it necessary to cancel the 1 Month Notice as the evidence presented by the landlord is not sufficient to justify terminating the tenancy at this time. However, **the tenant is cautioned that this decision will serve as a warning and the tenant is now aware that if conduct of the nature described is repeated, it could function as a valid reason to issue another Notice to terminate tenancy for cause under section 47 of the Act** or for the landlord to pursue other means of ending the tenancy."

[Reproduced as written]
[My emphasis added]

The landlord's agent testified that since the last hearing the tenant has continued to behave in the same manner as described in the previous decision.

The landlord's agent testified on February 16, 2015, they received a letter for an occupant that on February 10, 2015, the tenant called the occupant a "pea brain, a mental midget, and a flaming faggot". The landlord stated that they issued a warning letter on February 17, 2015, that this type of behaviour is not acceptable and if it continues that they will seek to end the tenancy. Filed in evidence are copies of the letter of complaint and the warning letter.

The landlord's agent testified that on March 10, 2015, their staff noticed that the tenant was at the occupants rent unit who issued the complaint on February 16, 2015 and the tenant was waving their arms and yelling at the occupant. The agent stated that a staff member approached the tenant and asked them to refrain from such behavior or they would contact the police; however, the tenant's behavior continued.

The landlord's agent testified that tenant has been engaging in harassing and abuse behavior towards this occupant since the tenant moved into the complex. The agent stated that the staff member took the occupant to the office and the police were called and a complaint of criminal harassment was filed. Filed in evidence is an incident report which supports the landlord's agent testimony.

The landlord's agent testified that another incident occurred on March 24, 2015, where their staff could hear the tenant yelling at the same occupant again in the hallway. The agent stated that the occupant came to their office asking assistance to have the tenant stop yelling at them. The agent stated that the tenant then came to the office and was displaying acts of physical and verbal aggression and they closed the door so they could speak privately to the occupant. The agent stated that they were then required to call 911, due to the tenant's threatening and aggressive behavior, in which the 911 operator could hear the tenant banging on the office door and yelling at them. Filed in evidence is an incident report from staff member MQ, the report supports the landlord's agent testimony.

The landlord's agent testified that since the tenancy commenced they have had ongoing problems with this tenant. The agent stated that although the tenant was warned in the decision dated February 5, 2015, by the Arbitrator and have received further written warning from the landlord, that the tenant continues to unreasonably disturb the other occupants and the landlord.

The tenant testified that they do not agree with the landlord's agent version of events.

The tenant testified on March 24, 2014, that they did not see the occupant in question. The tenant stated that when they were walking in the hallway towards their unit there was another occupant walking towards them and when they started to speak, they informed the occupant not to speak to them because "I don't like him". The tenant stated that they went into their rental unit and closed the door.

The tenant testified that they could hear from their unit that the occupant in the unit across the hallway opened their door and said to the other occupant walking down the hallway "what a fucking bitch".

The tenant testified that they were going to speak to the manager; however, the occupant from across the hallway was already in the manager's office. The tenant stated that they also wanted to speak to the occupant; however, they were told by the staff member in the office that they wanted to talk to the occupant privately and they closed the door.

The tenant testified that they went into the kitchen and called the police non-emergency number and were informed that they had already received a 911 call. The tenant stated that they told the person on the non-emergency number that they did not want to deal with the police that were called by the opposing party and that they wanted the police to dispatch two additional police officers to give their side of the story.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1)(i) of the Act a landlord may end a tenancy by giving notice to end the tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case the parties were at a dispute resolution hearing on February 5, 2015. The Arbitrator at the hearing ordered that the tenancy to continue. The tenant was warned in the decision that the tenant is now aware that if conduct of the nature described is repeated, the landlord was could end the tenancy with another notice.

Since the last hearing the police have attended to this residential property for two incidents due to the behavior displayed by the tenant towards the occupant that lives across the hallway.

The first incident was on February 10, 2015. On February 10, 2015, a staff member witnessed the tenant yelling and waving their arms at the occupant at the occupant's rental unit. The staff member spoke directly to the tenant and informed the tenant that if they did not stop this behavior towards the occupant, that police would be called. The tenant did not follow the directions of the staff member and continued to be disruptive. The occupant and staff member went to the office and the police were called and laid a complaint of harassment. The tenant did not provide any evidence to the contrary, except to simply deny the allegation. Therefore, I find on the balance of probability that on February 10, 2015, the tenant unreasonably disturbed another occupant.

The second incident was on February 24, 2015. On February 24, 2015, the tenant told another occupant not to speak to them. The two occupants were having a private conversation, which the tenant indicated that they overheard through the door that they referred to the tenant as a "bitch".

Even if I accept the tenant's version that they were called a name by the occupants, that did not give the tenant the right to cause a disturbance at the office, by banging on the door and yelling. It was due to the tenant's behavior that the office staff placed a 911 call to the police and during the call the 911 operator could hear the tenant yelling and banging on the door and the police were dispatched to the property.

Further, although the tenant deny the allegation, I find the tenant's version not to be reasonable as it would be unreasonable for the tenant to call the police to tell their side of the story, if in fact nothing had happened or if the office staff simply closed the door to have a private conversation with the occupant. Therefore, I find on the balance of probability that on February 24, 2015, the tenant unreasonably disturbed another occupant and the landlord.

Based on the above, I find the Notice issued on March 11, 2015, has been proven by the landlord for the reasons stated and is a valid and enforceable. Therefore, I dismiss the tenant's application to cancel the said Notice. I find the tenancy legally end on the date specified in the notice, which was April 30, 2015.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant.

Conclusion

The tenant's application to cancel the Notice, issued on March 11, 2015, is dismissed.

The landlord's application for an order of possession is granted.

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: May 07, 2015

Residential Tenancy Branch

