



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF, MT

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause set aside. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Is the tenant entitled to have the notice set aside?

Background and Evidence

The landlords gave the following testimony:

The tenancy began on or about 12 years ago. The landlords stated the tenant resides in an independent care facility for people 60 years old plus. The landlords stated that there are 50 units in the building. The landlords stated that the tenants' behaviour has become especially erratic over the past couple of months with the tenant first asking for permission to do something, and when he's denied, he does it anyways.

The landlords stated that they have given the tenant verbal and written warnings. The landlords stated the tenant decided to store his items in two parking stalls that did not belong to him. The landlords stated that they received a \$200.00 citation from the fire department due to the subject tenant leaving items strewn about in an unsafe manner in the sub foyer.

The landlords stated that they received complaints from other tenants who were fearful that the subject tenant had become confrontational and aggressive. The landlords also received complaints that the tenant was loud and having parties at all hours of the night. The landlords stated that they issued the notice to end tenancy on July 2, 2015. The landlords stated that the tenant chose to wait until July 29, 2015 to file to dispute the notice; which is outside the allowable timeline and the notice should be upheld and the tenancy deemed terminated.

The landlords stated the tenant had someone checking on his unit and that the notice was removed shortly after it was posted. The landlords stated that they issued the notice on three grounds; the tenant has significantly interfered with or unreasonably disturbed another occupant

or the landlord, the tenant seriously jeopardized the health and safety or lawful right of another occupant or the landlord and the tenant put the landlords' property at significant risk. The landlords request an order of possession.

The tenants' agent submitted the following:

The agent submits the tenant was hospitalized on July 2, 2015 and was released on August 20, 2015. The agent submits that the tenant has been experiencing mental health issues and that he has been diagnosed with "late onset bipolar disorder and was experiencing a manic episode". The agent submits that the tenant did not physically receive the notice to end tenancy until July 17, 2015 and that although the tenant filed his application outside of the allowable timeline, special consideration should be given due to his health. The agent submits that the tenant has responded well to medication and counselling and now has acute home base daily care in place for three weeks. The agent submits that the tenant wishes to continue to reside at the property.

The tenant gave the following testimony:

The tenant stated that he has no recollection of any of the events that the landlord alleges. The tenant stated that he enjoys living at this property and wishes to continue to live there. The tenant stated that he now realizes that he has some mental health issues but feels he has control of the situation.

Analysis

The time limitations of filing a dispute was a primary issue in this hearing, however I proceeded on the basis that all evidence was to be heard and considered and reserved judgement at the time of hearing in regards to the time limitation. After having considered the issue of time limitation, I address that issue as follows. The landlord issued the One Month Notice to End Tenancy for Cause on July 2, 2015 with an effective date of August 31, 2015. The tenants' agent stated the tenant received the notice from his case worker on July 17, 2015 but did not file to dispute the notice until July 29, 2015. The agent has asked that due to the circumstances before me, I disregard the 10 day limitation period to file a dispute of a One Month Notice to End Tenancy for Cause and consider the matter on its own merits as if the application was filed within the allowable time limit.

I do not accept the agents' submission on this point. In the agents' own testimony she stated that the tenants' case worker had served him with the notice of on July 17, 2015. The tenant had support and resources at his disposal however those resources simply filed the application too late. Further to that, the agent was unable to dispute the testimony of the landlords that someone was checking in on the tenants unit on a regular basis. I find that the matter before me does not fall under "exceptional circumstances" that would allow an extension of the allowable timeline. Based on the above, I hereby dismiss the tenants' application. The notice is of full effect and force. The tenancy is terminated.

Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Although I have deemed the tenancy to end I have taken into account several factors as to when the order of possession is to take effect. Those factors are; the security and safety of the other elderly tenants in the building, the relatively low risk of the subject tenant, the support and resources he now has in place for the next three weeks, the timing of this hearing, and the administration of providing the parties with this decision, I find that appropriate and just date that the order of possession be on September 30, 2015.

Both parties are to conduct themselves in accordance with the Act and the terms of the tenancy agreement until the end of tenancy.

For the sake of both parties and for absolute clarity, even if I have erred on the above, and I was to proceed with the hearing and make a finding on the facts before me; I would have found that the landlord had provided sufficient evidence to enforce the notice that the tenant has significantly interfered with or unreasonably disturbed another occupant or landlord due to the testimony and documentation of the landlord and the tenants inability to recall any of the events or dispute them.

Conclusion

The landlord is granted an order of possession. The tenants' application is dismissed in its entirety.

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: August 21, 2015

Residential Tenancy Branch

