



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHS COMMUNITY SERVICES SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC

Introduction:

This was an application by the tenant to cancel a Notice to End the Tenancy for cause dated August 20, 2015 to be effective September 30, 2015. Both parties were present at the hearing and agreed they received each other's documents for the hearing.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

This hearing began late as the parties agreed to wait until a hearing for another tenant in the same building was concluded. Both parties and the tenant's advocate attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began in November 2014, rent is \$375 and the tenant paid a security deposit of \$187.50. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant or persons permitted on the property have him;
 - (i) have significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - (ii) has seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- b) The tenant has engaged in illegal activity which has or is likely to:
 - i) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord provided evidence of a letter dated August 20, 2015 to the tenant from the landlord detailing how he was caught on camera in the corner store robbing it and on the landlord's camera showing him bringing the stolen property into the building. They note they had previously warned the tenant that the Police were watching him as a person of interest in break ins in the community. The landlord also submitted a criminal record check dating back to 2011 and showing among other items conviction for Possession of Stolen Property on August 19, 2014 and Breach of Probation in June 2015. The landlord said the constant Police involvement in the building due to the actions of the tenant and others involved causes significant disturbance to the landlord

and other occupants of their building and is jeopardizing the lawful rights of the neighbours who are experiencing this rash of break and enters.

The tenant's advocate said that the tenant has not been charged and there were no stolen goods in his room. The landlord said the Police informed them that they had a warrant for this tenant but they could not release the information as it is an ongoing investigation. The landlord said that they witnessed the tenant with another tenant carrying in a bin full of stolen items, new women's clothing with stickers still attached. He said the Police followed them to a commercial property and saw them break in. The tenant said another tenant brought in the bin, not him. He said he has changed his life and likes where he lives. At first he maintained he had no criminal charges and a clean record but when I questioned the Public Court record in evidence, he agreed he had been charged in the past with possession of stolen goods and other things but he has changed his life now. The tenant said he would do a lot better if these other tenants who have been accused with him are gone from the building. The landlord said this young man is a vulnerable youth and he is likeable and is really trying to change the lifestyle. However, the criminal activity is at a point where this and other tenants who participated are having their tenancy ended. He does not want to see him homeless and is actively working to do a resident exchange with another of their new buildings which is close by.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes. The onus of proof is then on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

Although the tenant disputed the Notice in time, I find the landlord has satisfied the onus of proving on a balance of probabilities that the tenant or persons permitted on the property by him have significantly interfered with or unreasonably disturbed another occupant or the landlord, have seriously jeopardized the health, safety or lawful right of another occupant or the landlord and the tenant has engaged in illegal activity which has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. I find the log of staff made at the time is persuasive as it details the tenant being caught on security cameras robbing a neighbourhood store and carrying the stolen property into the building. I find the landlord's evidence more credible and prefer it to the evidence of the tenant as it is supported by detailed logs, video surveillance and oral evidence of Police contact; I find the tenant's evidence less reliable as he was adamant at first that he had no criminal charges until I pointed out the Public Court record which was inconsistent with his statements. I find the significant Police involvement in the building and the frequent

robberies or harboring of stolen goods is seriously jeopardizing the peaceful enjoyment of other occupants and especially the landlord. I find the illegal activity is adversely affecting the security and safety of the neighbours as well. I dismiss the tenant's application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 47 and has upheld the Notice. The landlord has made this request at the hearing. As a result I grant the landlord an Order for Possession effective November 30, 2015 as requested.

I note the landlord has agreed not to enforce the Order of Possession to evict this young man who is a vulnerable youth until he can place him through an exchange in another of the society's new buildings nearby.

Conclusion:

I grant the landlord an Order for Possession effective November 30, 2015. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application; no filing fee is involved.

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: October 14, 2015

Residential Tenancy Branch

