



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF; CNC, FF

Introduction

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

- an order of possession for cause pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing dealt with the tenant's application pursuant to the Act for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The individual landlord (the "landlord") was assisted by his agent GN and his agent SA. SA is also a representative of the corporate landlord. The landlord called two witnesses: LF and BS. The tenant elected to call five witnesses: MG, MH, KA, NS, and HH. I heard testimony on 21 and 23 October 2015.

The agent SA testified that the 1 Month Notice was served 4 August 2015 by registered mail. The agent SA testified that the dispute resolution package including the evidence before me was served 29 August 2015 by registered mail. The tenant filed to cancel the 1 Month Notice. The tenant admitted receipt of the landlords' dispute resolution package and evidence. On this basis, I find that these documents were served by the landlords pursuant to sections 88, 89, and 90 of the Act.

The landlord stated that he had the tenant's dispute resolution package filed 11 August 2015, but did not have the tenant's evidence or amended application for dispute resolution that were received by the Residential Tenancy Branch on 5 October 2015.

Preliminary Issue – Tenant's Amendment and Evidence

The tenant purported to amend his application on 5 October 2015 as well as file evidence in support of his application. The tenant stated that he served MK with these documents on 5 October 2015. MK is the landlord's mother. The landlord stated that he did not receive these documents and confirmed with his mother that she did not receive any documents. I find, on balance of probabilities, that the tenant did not serve the landlord on 5 October 2015.

Rule 2.11 of the Rules of Procedure (28 June 2014) establish a process for amending an application:

The applicant may amend the application without consent if the dispute resolution hearing has not yet commenced.

...

If the application has been served, a copy of the amended application must be served on each respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing. ...

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. A party is entitled to examine the documents provided to me as evidence.

On the basis that the landlord was not served with the documents filed 5 October 2015, the tenant was told at the hearing that his application would proceed as filed 11 August 2015 and his evidence would not be admitted as to do so would unduly prejudice the landlord.

As not all evidence could be heard on the first hearing date it was necessary to reconvene the hearing. The tenant was given the opportunity to remedy the lack of service of his evidence by serving the landlord's agent with his evidence before 1800 on 22 October 2015 in advance of beginning his testimony on 23 October 2015. The tenant only served a portion of his evidence. This included all the photographs as well as two letters of reference. The tenant testified that he was unable to serve the landlord on 22 October 2015 with all of the evidence as he had left his package on transit.

The photographs, letter from the tenant's former employer and letter from the tenant's daughter are admitted. The remaining evidence is excluded as the landlord has not received it.

Preliminary Issue – Tenant's and Landlord's Evidence Received after Hearing

The tenant and landlords both submitted evidence to the Residential Tenancy Branch after the commencement of the hearing.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the Arbitrator.

I did not make any order with respect to evidence from either party. Thus, the parties have submitted this evidence in contravention of the Rules. Accordingly, I will not consider the tenant's or landlords' evidence received after the commencement of the hearing.

Preliminary Issue – Landlord's Conduct

The landlord was warned several times about his conduct in the course of the hearing. Eventually, I informed the landlord that, if the conduct continued, he would be removed from the hearing.

Rule 8.7 of the *Rules of Procedure* (28 June 2014)¹ permits me to exclude a party who engages in rude, antagonistic, or inappropriate behaviour:

Disrupting the other party's presentation with questions or comments will not be permitted. The arbitrator may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution proceeding and the arbitrator may proceed with the dispute resolution proceeding in the absence of the excluded party.

The landlord is cautioned that his conduct at this hearing was unhelpful and he should be mindful of rule 8.7 (now rule 6.10) in any future applications before the Residential Tenancy Branch. I did not consider anything said during these outbursts as evidence and have not considered them in reaching my decision.

Preliminary Issue – Prior Application

This tenancy was the subject of earlier cross applications heard 10 June 2015. That hearing was in relation to a 1 Month Notice issued 22 April 2015. The April 1 Month Notice set out that it was given for the same reasons that the current 1 Month Notice has been given:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

¹ Rule 6.10 of the *Rules of Procedure* (26 October 2015):

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

In that hearing the landlord JK, MK, and GK attended the hearing. The landlord's agent also attended. No other witnesses were called by the landlord.

The prior arbitrator cancelled the April 1 Month Notice on the following basis:

Section 47 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, **they have to be significantly interfered with or disturbed** and their health or safety must have been **seriously jeopardized**. ...The Landlord has provided family testimony that the Tenant has done these things but has not provided any corroborative evidence in the evidence package. The Landlord did say they issued a warning letter on April 8, 2015 but this was after the other tenants had left the rental unit. The Landlord's sister gave testimony that the two other tenants left because of the Tenant but there is no corroborative evidence to support her testimony.

...

As only the testimony of the parties directly involved with the tenancy has been provided for the hearing and that testimony is contradictory and neither party has provided any corroborative evidence to support their position I find the following. The burden of proving a claim lies with the applicant (landlord) and when it is just the applicant's word against that of the respondent's that burden of proof is not met. I find the Landlord has not met the burden of proof to prove the Tenant has **significantly disturb** other tenants or the Landlord or has **jeopardized the health or safety** of other tenants or the Landlord. The Landlord was unable to provide or submit any statements from the other tenants as to why they moved out and the Landlord did not phone the Police when the Landlord said the Tenant assaulted him and his mother. I find the burden of proof has not been met by the Landlord. I dismiss the Landlord's application without leave to reapply.

With respect to the Tenants application I find due to the lack of evidence the Tenant is successful in cancelling the Notice to End Tenancy. I Order the Landlord's Notice to End Tenancy for Cause dated April 22, 2015 to be cancelled and the tenancy is order to continue as in the tenancy agreement.

Further I find that this hearing can be used as a significant warning to the Tenant that any aggressive behaviour to the Landlord or other tenants can result in the Landlord issuing another Notice to End Tenancy and this hearing can be used to support the Landlord's evidence if the Landlord chooses to use it.

Preliminary Issue – Tenant's Evidence of Good Character

Many of the tenant's witnesses' testimonies provided evidence of the tenant's good character in general. The tenant's character generally is not at issue. At issue in this hearing is whether or not the tenant's conduct in the course of this tenancy has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or

safety or lawful right of another occupant or the landlord. The tenant is attempting to use this evidence to show directly that he is not the type of person that would have committed conduct of this nature and show directly that he is credible in saying that he did not commit conduct of this nature.

I explained to the tenant at the hearing that evidence of general good character is of limited assistance when the tenant's character was not directly in issue. I also summarised the rule against oath helping at the hearing.

While I heard testimony from the tenant's five witnesses, insofar as these witnesses provided evidence of the tenant's general good character, I have assigned that evidence little weight as it is of limited value in determining whether or not the tenant committed the alleged bad conduct. Where those witnesses have provided evidence of their observations of the occupants of the residential property or the interactions between the tenant and other occupants I have given the testimony greater weight.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession? Are the landlords entitled to recover the filing fee for this application from the tenant? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

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

This tenancy began 1 February 2015. Monthly rent of \$625.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$312.50, which was collected at the beginning of the tenancy. There is no written tenancy agreement for this tenancy.

The tenant rents a rental unit that consists of one room on the main floor of a house. The tenant is provided with access to shared kitchen and bathroom facilities. The facilities are not shared with the owner of the rental unit. For a two-month period commencing July 2015 BS occupied a rental unit on the main floor of the residential property, which shared kitchen and bathroom common areas with the tenant. The occupant LF occupies a rental unit in the upper floor of the rental unit. GK occupies a laneway home on the residential property.

On 4 August 2015, the landlord issued the 1 Month Notice to the tenant. The 1 Month Notice set out an effective date of 30 September 2015. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Testimony of SA

The agent SA testified that since the decision dated 10 June 2015 the tenant has engaged in aggressive behaviour in early July 2015. The agent SA testified that the tenant is causing difficulties in the other tenancies in the residential property.

Testimony of GK

GK testified that the tenant is causing great disturbances with other occupants of the residential property that consists of constant confrontation, harassment, and threats. GK testified that the tenant's disturbing behaviour began approximately two weeks after he moved in. GK testified that warnings to the tenant about his conduct resulted in escalation.

GK testified that another occupant, BS, left as a result of the tenant's conduct and that he "fled out of fear".

GK testified that she spoke to the tenant once when collecting rent on 1 July 2015. GK testified that the tenant has called her names and sworn at her in July. GK denied calling the tenant names. GK testified that the tenant told her to "watch her back" and that the tenant claims he "knows" people. GK posits that the tenant is making references to persons involved in organized crime.

GK testified that on 2 August 2015 she found the tenant calling LF and BS names. GK testified that she was terrified and she called the police who attended at the rental unit. GK testified that eight police officers attended at the residential property on 1 September 2015 when the tenant threatened LF. GK testified that she was unaware of any allegations by LF against the tenant regarding sexually harassing minors.

GK testified that the landlord has received a notice from another occupant LF that the tenant's conduct is affecting LF's quiet enjoyment of her rental unit.

Testimony of the Landlord

The landlord testified that ever since the tenant moved in the landlord is unable to rent rooms on the main floor. The landlord testified that the tenant is interfering with the other tenants' quiet use and enjoyment of the residential property. The landlord estimates that he has posted between ten and twenty advertisements. The landlord estimated that he has shown the rooms approximately six or seven times before BS rented the unit. The landlord testified that he has not shown the rental unit since BS vacated.

The landlord testified that BS left the residential property because of the tenant. The landlord testified that he believes that the tenant wishes to be "the last one standing" in the residential property. The landlord denies ever threatening the tenant.

Testimony of LF

LF testified. LF has been an occupant of the residential property for seven or eight years. LF testified that she finds living in the residential property “impossible” because of the tenant. LF testified that it needs to stop. LF testified that she is terrified to be in the house. LF testified that if the tenant remains she will have to leave.

LF testified that on 2 August 2015 she came down to the middle floor rental units as there was smoke entering her rental unit. LF testified that BS was very apologetic. LF testified that the tenant called BS a drunk and a drug user. LF testified that the tenant would yell and curse at BS.

I was provided with emails from LF to the landlord about the various incidents as she reported them.

Testimony of BS

BS testified that he occupied a rental unit on the residential property that shared a kitchen and bathroom with the tenant. BS testified that he occupied the rental unit for July and August. BS testified that he left the tenancy because of the tenant’s conduct. BS characterized the tenant’s behaviour as harassing and intimidating.

BS testified that he burned some food while cooking in early August. BS testified that LF came down to the rental unit and then LF and the tenant began yelling at each other.

Testimony of the Tenant

The tenant testified that he has done nothing wrong. The tenant testified that he has behaved “like a total gentleman”. The tenant testified that he is a model tenant and is polite to everyone. The tenant testified that he never touched anyone or threatened anyone. The tenant rejects all of the allegations made against him.

The tenant testified that since he moved into the rental unit in February, he has only spoken to LF two or three times. The tenant testified that two of these times were with the police on 2 August 2015 and 1 September 2015. The tenant testified that LF has harassed the tenant about smoking on the deck outside the tenant’s rental unit. The tenant testified that LF would slam doors.

The tenant asks me draw a positive inference from the lack of testimony from the downstairs occupant, J. The tenant testified that he has a good relationship with J.

The tenant testified that he would not complain about BS. The tenant testified that he would clean up after BS. The tenant testified that BS removed all of the tenant's pots from the shared cupboards and left him a note. The tenant testified that he got along with BS until the tenant noticed BS smoking marijuana in his room.

The tenant testified that he awoke one day to find the rental unit filled with smoke. The tenant testified that BS burned his food while cooking. The tenant testified that he opened all the doors and windows to the rental unit and common areas. The tenant testified that he believed BS to be intoxicated. The tenant testified that LF came down as a result of the smoke and got angry with the tenant. The tenant testified that he contacted the landlord's mother MK. The tenant testified that four police officers attended at the residential property. The tenant testified that at this time LF made a statement about the tenant "cat calling" teenage visitors to the residential property. The tenant testified that the police spoke to JK, GK, LF and MK for approximately forty five minutes but that he did not get involved.

The tenant testified that as a result of an altercation with LF about the tenant's smoking the police attended. The tenant testified that six to seven police arrived.

Tenant's Witnesses

The tenant called with the witness MG to testify. MG testified that she has known the tenant for twenty years. MG testified that she found the tenant to be an honest person. MG testified that she has not witnessed any interactions between the tenant and other occupants or the landlord.

The tenant called the witness MH to testify. MH testified that the tenant is a great guy, thoughtful, considerate, polite, and helpful. MH testified that she has not witnessed any interactions between the tenant and other occupants or the landlord.

The tenant called the witness KA to testify. KA is the tenant's daughter. KA adopted the content of her written statement as true. KA testified that she saw one of the occupants of the main floor once or twice sitting on the porch. KA testified that she did not interact with the occupant, but had "weird vibes". KA's letter notes that BS has teddy bears and reports that the tenant reported the incident regarding the burned food to KA.

The tenant called the witness NS to testify. NS testified that he has known the tenant for fifteen years. NS testified that the tenant is not a confrontational person. NS testified that the upstairs occupant had a scowl and would not say "hi". NS testified that the upstairs occupant would stomp on the stairs and slam doors. NS characterised the upstairs occupant's conduct as "rude". NS testified that he met BS. NS testified that he would see BS on the porch writing. On cross examination NS testified that he had never witnessed any confrontation between the tenant and other occupants or the landlord.

The tenant called the witness HH to testify. HH testified that he has known the tenant for twenty years. HH characterised the tenant as highly intelligent and professional. HH testified that he attended at the residential property to pick up the tenant for work. HH testified that LF would not tell HH where the tenant lived. HH testified that he threw rocks at a door and LF emerged. HH characterised LF as “cold”. HH testified that he met BS (whom he described as “teddy bear guy”) and that BS did not say “hi” back. HH admitted that he has not witnessed any interaction between the tenant and other occupants or the landlord.

The tenant provided a reference letter from an employer. The employer’s letter provides an account of the tenant’s general good character.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. On 4 August 2015, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord submits that the tenant’s conduct provides cause on the above-noted bases. In particular, the landlord says that the tenant has threatened and intimidated other occupants of the residential property. Further, the landlord says that the tenant’s conduct is preventing the landlord from renting out the vacant rental units on the residential property and jeopardizing the lawful right of the occupant LF to quiet enjoyment.

Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The parties provided evidence about the tenant’s conduct generally and in relation to specific incidents which occurred on or about 1 July 2015 and 2 August 2015.

The tenant testified that he did not commit the conduct alleged. The tenant provided testimony from various witnesses that spoke to their interactions with other occupants of the residential property. The tenant’s witnesses did not observe any negative interactions between the tenant and other occupants; however, the tenant’s witnesses that had interacted with other occupants all provided negative testimony of those interactions.

The parties' testimonies are in conflict. Where testimony conflicts, I am required to assess the credibility of the parties.

I found the tenant's testimony to be unconvincing. In particular, the tenant has an interest in continuing his tenancy. I found that the tenant minimises his role in the negative interactions that he has had with various occupants. The tenant's witnesses provided little assistance in determining whether the incidents in issue actually occurred as they did not witness the actual events; however, the witnesses seemed to provide evidence that the relationship between the tenant and other occupants was not friendly.

In considering the tenant's testimony in contrast to the events as described by LF, BS and GK, the testimony provided by LF, BS and GK surrounding the incidents that occurred after the previous hearing are much more convincing. Importantly, BS has no interest in the outcome of this application as he is no longer a resident of the residential property. The tenant asks me to draw a negative inference from the fact that J did not testify. There may be many reasons why J did not testify. Further, there is no property in a witness. Had the tenant wished, he could have called J to testify that the events did not occur. I draw no such negative inference.

On the basis of this assessment of credibility I prefer the account of LF, BS and GK to the tenant. On a balance of probabilities, I find that the tenant committed the conduct of which the landlord complains.

The next matter is to determine whether the conduct of which the landlord complains rises to such a level as to create a significant interference or an unreasonable disturbance of the other occupants as alleged. The previous arbitrator put the tenant on notice that continued aggressive conduct could be grounds to end the tenant's tenancy. The LF, BS and GK all provided testimony that the tenant is aggressive, intimidating and threatening. BS testified that the tenant's conduct was so bad BS had to end his tenancy. Two specific events occurred in July and August after the first hearing. I find that the tenant's conduct as described by these parties constitutes both a significant interference and unreasonable disturbance of the other occupants of the residential property.

I find that the 1 Month Notice is valid on the basis of subparagraph 47(1)(d)(i). As the notice is valid for this reason, I need not consider the other reason set out in the 1 Month Notice.

The tenant's application to cancel the 1 Month Notice is dismissed. The landlords' application for an order of possession is allowed and is effective the later of two days from service on the tenant or the period for which the tenant has paid for his use and occupancy of the rental unit.

As the tenant has not been successful in his application, he is not entitled to recover his filing fee from the landlords. As the landlords have been successful in their application, they are entitled to recover their filing fee from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlords are provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of \$50.00. The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: November 13, 2015

Residential Tenancy Branch

