



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated August 28, 2015.

The tenant, a tenant advocate, an agent for the landlord (the “agent”), a building manager for the landlord, and a police constable witness for the landlord, attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony and to make submissions to me.

Both parties confirmed that they received the documentary evidence from the other party and had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matter

During the hearing, the tenant advocate stated that five pages of over eighty pages were not in her package. The landlord testified that all three packages, the landlord’s package, the tenant’s package and the package for the Residential Tenancy Branch were identical, included tabs, and were not missing any pages. As the tenant confirmed that he provided the document to a person by the name of “Susan” before the tenant advocate had seen the package, I find that on the balance of probabilities, that the pages were likely misplaced after being served on the tenant, versus not being included in the original package. In reaching this decision, I have also considered that the tenant advocate did not dispute that the pages could have been misplaced.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled or upheld?

Background and Evidence

A fixed-term tenancy agreement began on July 1, 2011 and reverted to a month to month tenancy after November 30, 2011. A copy of the tenancy agreement was submitted in evidence. The tenant's rent is subsidized and the tenant's portion is \$375 per month and is due on the first day of each month. The tenant paid a security deposit of \$250 at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed that he was served on August 29, 2015 with a 1 Month Notice dated August 28, 2015 which alleged four causes. The causes listed on the 1 Month Notice are:

1. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
2. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
3. The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant disputed the 1 Month Notice within 10 days of being served with the 1 Month Notice on August 29, 2015 in accordance with section 47 of the *Act*. The effective vacancy date on the 1 Month Notice is listed as September 30, 2015.

The agent referred to page 50 in the landlord's evidence which is a photo of the tenant with a black garbage bag. The tenant confirmed that it was him in the photo, which is date and time stamped and includes the location in the building. The agent then referred to photos 52 and 53 which show two staff members who went in the garbage room about five minutes later respectively, according to the time stamp on the screen shot of the high definition video footage. The agent stated that the tenant was witnessed entering and exiting the garbage room during the time when new staff were being trained on the video surveillance system, and as a result, a staff member continued to monitor the garbage area while the two staff members attended to retrieve the garbage

bag of the tenant to ensure that nobody else entered the garbage room during that time. The agent testified that other than the two staff that entered the garbage room to recovery the tenant's black garbage bag, nobody else entered the garbage room during that time period.

Although the tenant denied that the garbage bag was his, the tenant later admitted that the prescription drug bottles located in the garbage matched the name of a person he knew, A.P., who was invited into his rental unit, and who the agent provided public court documents in evidence supporting that A.P. has awaiting disposition for many drug related criminal offences currently. In addition, the tenant confirmed that photo identification found in the garbage had the name and photo of his son, J.A. A copy of that photo identification was submitted on page 61 in the evidence.

The agent called their witness, Constable M.I. (the "Constable"). The Constable testified that he has been a police officer for over five years and for four years and seven months, he was a beat officer in a well-known area for drug use and who has considerable experience investigating drug related criminal offences, and knowledge of drug houses and drug paraphernalia. The Constable testified that he has filed hundreds of criminal charges related to illegal drug activity and stated that on page 55 of the evidence the bags in the photo are known as "dime bags" that are typically used for "crystal meth". The aluminum foil in the photo is burnt as drug users will heat up the drugs in the foil in order to inject them into their bodies.

On page 56, the Constable testified that the bags appear to contain what in his professional opinion is drug residue. On page 57, the Constable testified that the syringe is typical of those syringes used for injecting drugs, and that the water tube is typical of the water used to cook drugs before injecting them. On page 58, the Constable referred to the public court records for A.P., the person who the tenant confirmed was in his rental unit. The Constable testified that A.P. is currently awaiting disposition on 20 charges of possession of a controlled substance for the purpose of trafficking, for 1 charge of possession of a controlled substance, for two charges for breach of an undertaking, and 1 other drug related charge.

On page 59 of the documentary evidence, the Constable referred to the glass pipes, some of which were broken, and both of which were dirty. The Constable testified that the glass pipes are known as "crystal meth pipes" for smoking crystal meth and that the tin cups shown in the photos are use with the drugs.

The agent made a verbal request for an order of possession during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – Based on what I consider to be expert testimony from the Constable which I afford significant weight, and the fact that the tenant confirmed that his son's identification was in the garbage bag with the syringes and drug paraphernalia which was discarded in the building's common garage area, I find the landlord has met the burden of proof in proving the first cause listed on the 1 Month Notice, namely:

1. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Given the above, I find there is no need to consider the other three grounds listed on the 1 Month Notice. I do not find the tenant to be credible as the tenant denied that it was his garbage and his son's identification and the prescription medication bottles of someone invited into his rental unit were located inside the garbage bag. Furthermore, I find the photo evidence to be compelling and of significant weight in support of the landlord's 1 Month Notice.

Based on the above, I find the landlord's 1 Month Notice is valid. **I dismiss** the tenant's application to cancel the Notice and **uphold** the landlord's 1 Month Notice dated August 28, 2015. The agent verbally requested on order of possession during the hearing. Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) **the landlord makes an oral request for an order of possession, and**
- (b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Given the above and taking into account that the effective date of the 1 Month Notice has passed and the agent's oral request for an order of possession during the hearing, I find that the landlord is entitled to an order of possession effective **two (2) days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed. The 1 Month Notice issued by the landlord is upheld.

The landlord is granted an order of possession effective **two (2) days** after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 5, 2015

Residential Tenancy Branch

