



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 OPC

Introduction:

This hearing was convened to hear an application by the tenant to cancel a Notice to End the Tenancy for cause dated September 28, 2015 to be effective October 31, 2015. Both parties were present at the hearing and confirmed personal service of the Notice to End Tenancy and of the tenant's Application.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenant said he had a brain injury so had some problems with speech. His advocate and his mother were present to assist him. The evidence is the tenancy began September 17, 2014, rent is \$375 per month and a security deposit of \$187.50 was paid. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- b) The tenant is seriously jeopardizing the health, safety or physical wellbeing of other occupants.

The landlord said the Notice to End Tenancy was mainly served because of the number of physical assaults. The violence is seriously jeopardizing the safety and peaceful enjoyment of other occupants. They said that the incidents may have been provoked but the tenant responds with physical violence. For example, one incident seen by staff occurred at the elevator where words were exchanged and the tenant then punched the other tenant and a bike fell. Two incidents occurred in the laundry room, in one he accused another of stealing his laundry and then punched him. In another, he went out onto the catwalk outside his unit and walked to the laundry room window. When another occupant opened the window, the tenant punched him. Over the past year, assaults have occurred on April 4, 2015 between him and a youth and witnessed by staff, on May 15, 2015 (laundry room window incident), on August 8, 2015 and September 21, 2015. On June 19, 2015, the landlord agreed that another tenant may

have physically instigated a fight and the tenant pressed charges against him. The Mental Health's support staff timeline note they get constant complaints from his neighbours on each side of him saying he accused them of breaking into his room and one said he threatened to hurt him on numerous occasions. The landlord said they tried to work to preserve the tenancy and moved the tenant to the 5th floor on June 29, 2015. However, on August 8, 2015, the tenant again assaulted another tenant near the elevator and he was caught on camera lunging at the other tenant and punching him. Again on September 21, 2015, the tenant was seen by another staff member punching another tenant in the face in the laundry room so the other tenant had to get stitches. Coast Mental Health provided a letter stating he has made threats and been involved in physical and verbal altercations. They have tried to connect him to other housing for more appropriate support but he denies any issues.

The tenant recounted how the bike at the elevator hurt him as it fell and he had an argument with another tenant about smoking pot. The advocate pointed out that many tenants and his doctor support this tenant and provided some letters in evidence. They also disputed some of the events on the timeline of other events provided by the landlord but the landlord did not comment on the timeline in evidence but commented only on the physical violence which is the main reason for ending the tenancy.

The tenant's mother who provides constant support to her son said some tenant had stolen her son's medication and the Mental Health Team and BC Housing are not sufficiently supporting him in his need for supportive housing. The landlord promised to connect the tenant to resources. After discussion, the landlord requested an Order of Possession and agreed to the effective date of January 31, 2016 although the tenant hoped for March 31, 2016. The landlord said safety issues compelled the January date.

In evidence is a doctor's letter dated November 4, 2015 stating that in his opinion, the tenant was not the cause of the laundry room altercation as he was simply looking for his clothes at the time. In evidence are 3 letters from other tenants stating they have witnessed incidents when the tenant was assaulted by others in the building and he should not be evicted. His mother wrote a long supportive statement noting problems in the building and management's lack of response to the tenant's valid claims such as theft and items missing from his room. She accuses the landlord's staff of making inaccurate recordings on the timeline and calling Mental Health who call Police to take him to hospital. She notes he is friendly and peaceable and other tenants support him.

Analysis:

The Notice to End 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 it. The onus of proof on a balance of probabilities is on the landlord to prove they have good cause to end the tenancy. I find the landlord has satisfied the

onus of proof. I find their evidence credible and I prefer it to the evidence of the tenant as the landlord's evidence has significant support from camera surveillance, eye witness accounts and reports from staff and Mental Health.

Although the tenant provided a doctor's opinion regarding the laundry room conflict, I find this was based on his knowledge of the tenant and what the tenant told him whereas there was an eyewitness account of a staff member who saw the assault. The other 3 tenants who wrote letters in support of the tenant note he is a good person and they have seen him being assaulted. However, they do not provide eye witness accounts of a specific incident or details of the assaults which the landlord cites as the reasons for ending the tenancy. I find it is possible there were other assaults where the tenant was not at fault but these are not the incidents cited by the landlord. Some other tenants signed in support but for the same reason, I find their support does not outweigh the detailed evidence of the landlord. I therefore dismiss the application of the tenant 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 January 31, 2016 as agreed by the landlord. While the tenant requested I consider section 68(2) (a) of the Act and order another date to end the tenancy, I find the effective date of the Notice to End Tenancy was October 31, 2015. I find it would be unfair to the landlord to grant time beyond January 31, 2016 as an effective date for the Order of Possession as the tenant's behaviour shows the landlord's concerns for safety of other residents are well founded.

Conclusion:

I grant the landlord an Order for Possession effective January 31, 2016. I dismiss the tenant's application in its entirety without leave to reapply. No filing fee was 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: December 16, 2015

Residential Tenancy Branch

