



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City of Vancouver
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlords: OPC
 Tenant: CNC

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlords sought an order of possession and the tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by two agents for the landlord; their witness; the tenant; his advocate and his witness. The tenant had arranged for another witness however, based on the tenant's description of what he intended to have the witness speak about I determined that his testimony was not relevant to the proceeding and the witness was not called.

The landlord also stated that they had arranged for a number of additional witnesses to attend the hearing but that they did not show up for the hearing.

During the hearing the landlord's agent confirmed that a police statement form that was submitted to the Residential Tenancy Branch as evidence had not been supplied to the tenant. As such, I advised both parties that I would not be considering the content of that report in making this decision.

I also note the landlord had submitted a hand written statement from another witness to the Residential Tenancy Branch on December 16, 2015. However, Residential Tenancy Branch Rule of Procedure 3.14 requires that any evidence not served with the original hearing package and Application must be served no later than 14 days prior to the hearing.

As this hearing was held on December 22, 2015 the landlord was required to serve all evidence no later than December 8, 2015. As such, I have also not considered this evidence submitted by the landlord.

I also note that the landlord submitted documentary evidence dating as far back as 2006. However, as these issues related to previous tenancies between these two parties I have not considered them in this decision. Further, during the hearing I advised both parties that if they wished to raise issues related to the tenant's other previous behavior it must be restricted to events during this latest tenancy only.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the Act.

Background and Evidence

The parties agree this current tenancy began in March 2014 as a month to month tenancy for a monthly rent of \$475.00 due on the 1st of each month with a security deposit of \$187.50 paid.

The landlord submits on October 20, 2015 the tenant was involved with an altercation with another resident from the residential property. The landlord and their witness provided testimony regarding the events of that date.

While the landlord's agent did not specifically witness the events he was just inside the building during the event and he went outside to deal with the aftermath shortly after it occurred. He stated when he arrived the other resident's nose was bleeding and he took him to the office to attend to him.

Both parties, including their respective witnesses, testified that the two residents had a heated verbal exchange that included female resident of the property who is also the tenant's girlfriend.

The exchange escalated when the other resident and the tenant's girlfriend reached a standoff in very close proximity to each other.

The landlord and their witness submit at this point the tenant assaulted the other resident by punching him twice in the head and causing the resident's nose to bleed. The tenant and his witness submit that the tenant only pushed the other resident out of the way but that he did not punch him. The tenant suggested that there may have been other reasons the resident's nose bled and that there was no blood or bruises on his hands. The tenant's witness further stated that she did not see any blood.

The parties acknowledge the police were called. The landlord's witness stated that he originally wanted the police to lay charges but that a close friend of the tenant convinced him that he should not do so. He states he contacted the police and told them he did not want to press any charges.

The tenant submits the person the tenant is talking about was not a friend of the tenant. He also stated while the police had him handcuffed for some time they did not incarcerate or charge him with any offenses.

The landlord submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on October 23, 2015 with an effective date of November 30, 2015 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or a lawful right of another occupant or the landlord; and the tenant has engaged in illegal activity that has, or is likely to seriously affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant requested that if he were unsuccessful in his Application to have the Notice cancelled he be given 90 to 120 days to have to vacate the rental unit. The landlord did not object to any extensions of the end date of the tenancy.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

When opposing parties to a dispute provide testimony of equally plausible versions of events the party with the burden of proof must provide additional evidence to substantiate their claim or position. In the case of a landlord trying to end a tenancy the burden is on the landlord to provide sufficient evidence to establish their version of events provides sufficient cause to end the tenancy.

In the case before me, I am satisfied, by the testimony of both parties, that on October 20, 2015 the tenant and another resident of the property had a verbal and physical altercation.

While I accept that both parties have provided differing but equally plausible accounts of the events, I prefer the landlord's version, in part because the landlord's agent himself had witnessed the bloody nose of the other resident. I find it unlikely, in the absence of any significant evidence from the tenant, that the other resident's nose would start bleeding simply by being pushed by the tenant.

I find these actions by the tenant, despite the other resident's initiation of the verbal altercation, have seriously jeopardized the health and safety of the other resident. As a result, I find the landlord has established sufficient cause to end the tenancy.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution.

In consideration of the tenant's request and the landlord's agreement to a future end date to the tenancy, I find the landlord is entitled to an order of possession effective **March 31, 2016 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 22, 2015

Residential Tenancy Branch

