



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

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

- an Order of Possession for cause, pursuant to section 55
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 30 minutes. The landlord's two agents, landlord MJ ("landlord") and "landlord SK" attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the resident manager for the rental building and landlord SK confirmed that she is the property manager for the landlord company. Both agents confirmed that they had authority to speak on behalf of the landlord company named in this application at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on November 26, 2015, by way of registered mail. The landlord provided a copy of a Canada Post receipt and tracking number with its Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on December 1, 2015, five days after its registered mailing.

The landlord testified that the tenant was personally served with the landlord's 1 Month Notice to End Tenancy for Cause, dated November 5, 2015 ("1 Month Notice") on the same date. A copy of a signed, witnessed proof of service was provided. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 1 Month Notice on November 5, 2015.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on May 28, 2013 for a fixed term of six months after which it transitioned to a month-to-month tenancy. Monthly rent in the amount of \$922.00 is currently payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord testified that the tenant continues to reside in the rental unit, as she saw the tenant in the unit on the day before this hearing.

The landlord confirmed that she became the resident manager for this rental property on March 29, 2014 and landlord SK confirmed that the landlord company became the property manager in March 2015. The landlord testified that since she began managing the rental property, the tenant's son ("occupant son") has been living with the tenant in the rental unit, likely since the beginning of the tenancy, but at least since she has taken over management. The landlord confirmed that the occupant son is currently in jail.

The landlord's 1 Month Notice indicates an effective move-out date of December 31, 2015. The landlord issued the notice for the following reason:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord indicated that the tenant and her occupant son cause excessive noise, violence, fighting and threats towards each other and other tenants in the rental unit and the rental building, particularly during late night and early morning hours. The landlord confirmed that the tenant and her occupant son become heavily intoxicated and throw furniture around in the unit. The landlord confirmed that one tenant from the same floor vacated her unit in August 2015 because of the above behaviour. The landlord confirmed that other tenants are afraid for their safety and keep their children away from the tenant and her occupant son. The landlord stated that the occupant son has verbally threatened her. Landlord SK confirmed that the occupant son has made inappropriate sexual comments towards her and is a scary, threatening person. The landlord provided copies of numerous complaint letters and emails from other tenants in the rental building from 2014 and 2015, most recently in October and

December 2015. The landlord stated that these letters and emails were also provided to the tenant. The landlord confirmed that she received these complaint letters from other tenants and that she provided written warning letters to the tenant and her occupant son to stop the above behaviour or their tenancy would end. The landlord provided copies of these letters for this hearing.

The landlord explained that the tenant and her occupant son continued the above behaviour after the issuance of the 1 Month Notice to the tenant. The landlord stated that the occupant son was taken to jail following an incident on December 23, 2015, in the rental unit, whereby another tenant called the police who arrested the occupant son.

Analysis

Section 55 of the *Act* reads as follows:

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 to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Based on the landlord's undisputed testimony at this hearing, I am satisfied that the landlord issued the 1 Month Notice for a valid reason. I find that the tenant and her occupant son significantly interfered with and unreasonably disturbed other occupants and the landlord by causing excessive noise, violence and threatening behaviour particularly during late night and early morning hours. The landlord provided numerous complaint letters from other tenants in the rental building regarding the above behaviour and the effect on their safety and well-being. The landlord provided numerous letters to the tenant and her occupant son warning about this behavior and possible eviction, after which the behaviour did not change. The landlord indicated that as recently as December 23, 2015, she received a written complaint from another tenant in the rental building, regarding the police being called and the occupant son being arrested for physical abuse, violence and noise at night.

The next issue is whether the landlord waived its right to pursue the 1 Month Notice. Residential Tenancy Policy Guideline 11 discusses the issue of waiver:

A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has

been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.

The landlord testified that she accepted a rent payment for January 2016, such that the tenant's rent is paid in full. Although the landlord accepted rent after the effective date on the 1 Month Notice of December 31, 2015, I do not find this to be a waiver of the 1 Month Notice. The landlord did not withdraw its Application to enforce the 1 Month Notice, at any time prior to this hearing. The landlord submitted written evidence for this hearing that supports the 1 Month Notice and the landlord's intention to evict the tenant. The landlord testified that she spoke with the tenant verbally on a number of occasions and most recently just one week prior to this hearing and advised the tenant that she was only accepting rent until a determination was made regarding the tenancy at this hearing. This is recent evidence of the landlord's intention to pursue the 1 Month Notice and obtain an order of possession against the tenant.

For the above reasons, and given the conduct of the parties, I find that the landlord did not waive its rights to pursue the 1 Month Notice and did not waive the 1 Month Notice

expressly or impliedly. I find that the landlord did not intend to reinstate this tenancy, despite accepting a rent payment after the effective date stated on the 1 Month Notice.

Based on my decision to uphold the landlord's 1 Month Notice, I find that this tenancy ended on the effective date of the 1 Month Notice, December 31, 2015. However, the tenant has paid full rent for the entire month of January 2016, so she is entitled to occupy the premises until January 31, 2016. Accordingly, I find that the landlord is entitled to an Order of Possession, effective at 1:00 p.m. on January 31, 2016.

As the landlord was successful in this Application, I find that it is entitled to recover the \$50.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord **effective at 1:00 p.m. on January 31, 2016**. Should the tenant or any other occupants on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to deduct \$50.00 from the tenant's security deposit of \$450.00 in full satisfaction of the monetary award for the filing fee granted at this hearing. I order the landlord to deal with the remainder of the security deposit, in the amount of \$400.00, at the end of this tenancy in accordance with section 38 of the Act.

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: January 21, 2016

Residential Tenancy Branch