



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed May 24, 2016 wherein he sought to cancel a 1 Month Notice to End Tenancy for Cause issued on May 24, 2016 (the "Notice") and for more time pursuant to section 66(1).

Both parties appeared at the hearing. The Landlord was represented by the property managers, L.P. and N.K. L.P. testified on behalf of the Landlord and provided the Landlord's submissions. The Tenant appeared on his own behalf. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant named the apartment building as the Landlord on his application.

Introduced in evidence was a copy of a residential tenancy agreement indicting this tenancy began October 1, 2014. I was advised that the rental unit is a townhome in a building which has a total of 14 units. The original tenancy agreement was between the Tenant and P.H. Ltd. Introduced in evidence was a copy of a letter dated February 25, 2016 wherein it was confirmed that the rental building was purchased by new owners,

who in turn hired the management company noted on the Tenant's Application for Dispute Resolution.

L.P. confirmed the correct legal name of the management company.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Tenant's Application for Dispute Resolution to note the Landlord as P.C.P.M. Ltd.

As well, the Tenant's application for more time pursuant to section 66(1) was not necessary as he applied on the same day as receiving the Notice.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

The Landlord issued the Notice on May 24, 2016. The reasons cited on the Notice were that the Tenant or a 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 evidence establishes that the tenancy has been problematic. L.P. confirmed that the situation became intolerable in May of 2016 and as a result the Notice was issued.

L.P. testified that they have had repeated complaints about noise, and the other occupants' fear of the Tenant and his guests. These occupants reported their concerns to the resident manager, but also to the police directly.

L.P. testified that the police have attended the rental unit a minimum of four times since January 2016 (when she took over management of the complex) including an incident on May 22, 2016 wherein the Tenant and his guest (apparently his girlfriend) were yelling and screaming at one another and June 7, 2016 when the Tenant was formally charged with assault.

L.P. also stated that the Tenant's guest, J.M., who was a previous tenant and who has been informed not to attend the rental building continues to attend with the Tenant. She further stated that J.M. has threatened both resident managers as well as threatening to kill the former landlord.

On June 7, 2016 the Tenant was arrested and removed from the property for allegedly assaulting another guest "R.". L.P. stated that an elderly tenant, L.J., attempted to get between them and the Tenant motioned to hit L.J. and then "stormed off". The Landlord provided in evidence the police file number. She also stated that to her knowledge the Tenant was released on an undertaking to keep the peace and to appear.

According to L.P., R. told her he was living in the rental unit with the Tenant.

Introduced in evidence were copies of numerous 10 Day Notices to End Tenancy for Unpaid Rent or Utilities issued on the following dates:

- May 29, 2015;
- September 4, 2015;
- February 6, 2016;
- May 5, 2016;

L.P. stated that on a few different occasions, J.M., the previously evicted tenant, has threatened the resident managers and the supervisor. L.P. stated that she is afraid to walk across the property. She also said that as the Tenant is unpredictable, and violent, noting that he hit his girlfriend and his friend R., the resident managers are uncomfortable walking around the property.

Also introduced in evidence was a letter from both Resident Property Managers setting out the concerns the Landlord has with the Tenant. In this letter they allege the following:

- On May 11, 2016 guests of the Tenant filled the common property with a variety of goods, deconstructing, fixing and trying to sell them. The Landlord also writes that the guests were fighting and disturbing other renters in the building and that as a result the police were called.
- On May 15, 2016 the same guests were again selling items on the property, and before they left they dropped off their items at the rental unit.

- On May 22, 2016 the Tenant and a guest of his were yelling and screaming at one another. Another resident of the rental building reported the Tenant was heard hitting this other guest. Again the police were called to handle the situation.
- On May 22, 2016 guests of the Tenant were using the common area to fix a shopping cart full of goods. The Police were called and a "file for the trespassers were called to handle the situation".
- The above mentioned guests were again seen on the rental property on May 23, May 25 and June 12 at which time they were observed storing their goods on the Tenant's patio as well as dumping loads of garbage in the. The Landlord writes that the Tenant was present and aware when these guests were asked not to return and has continued to allow them access to the common property, and his rental unit.
- A former tenant, and friend of the Tenant, J.M., has been seen frequently at the rental unit and has threatened to harm the resident managers and to kill the previous landlord. The letter further alleges that the Tenant was aware of J.M.'s presence and watched as he threatened the resident managers. On May 31, 2016 the police attended and informed the Tenant and J.M. that J.M. could no longer be on the property.
- The Tenant has come to the resident managers door on numerous occasions since receiving the Notice and has banged on the door and yelled at the resident managers.
- On May 31, 2016 J.M. was again on the property and was posturing and threatening towards the resident manager N.K. Again the Tenant was present and witnessed his guest, J.M. threatening N.K. The police were again called and the Tenant was informed J.M. was not permitted on the property.
- On June 3, 2016 the Tenant failed to pay his rent and was issued a 10 Day Notice to Ent Tenancy for Unpaid Rent and Utilities. The Tenant attended the resident managers' rental unit, yelled at N.K. and refused to pay the late fee. After this incident the resident managers informed the Tenant that all future communication was to be in writing.
- On June 7, 2016 the Tenant attacked one of his guests with such force that the fencing was loosened. The Tenant was charged with assault.

Also introduced in evidence were letters from other renters in the rental building. In one letter from A.H., the daughter of a renter, L.J., they write of the difficulties living in the same building with the Tenant. They write they have called the police on numerous occasions. A.H. and L.J. also write of the incident wherein the Tenant assaulted his girlfriend. A.H. and L.J. write that they are fearful of the Tenant and his guests.

In another letter from A.H. and L.J. they write about the incident on June 7, 2016 wherein they write the Tenant was yelling and swearing at his friend "R." and that he hit R. from behind in the head and pushed him through the fence also punched him "where ever he could". A.H. writes that her mother, L.J. attempted to step in between the two of them at which time the Tenant gestured that he was going to hit L.J.

In another letter dated June 8, 2016 another renter at the rental building, V.T., wrote about the June 7, 2016 incident. She wrote that the Tenant yelled at R., threw punches at the back of his head and lunged at the neighbour L. whom she described as "a frail elderly lady".

Also introduce in evidence was a letter dated June 8, 2016 from D.E., another renter at the rental building wherein she describes the incident on June 7, 2016. She also writes that the Tenant hit R. twice in the head and then "charged at him knocking the fence down". She further writes that the Tenant "also charged at an elderly lady which had her daughter & granddaughter at her place."

Also introduced in evidence were copies of warning letters to the Tenant on the following dates:

- October 27, 2014 re: smoking on the property;
- December 2, 2014 re: additional occupants;
- February 2, 2015 re: uninsured vehicles;
- May 12, 2016: re: additional occupants;
- May 16, 2016: re: uninsured vehicles;

At the conclusion of the Landlord's submissions, the Tenant was offered an opportunity to provide evidence. At first he refused to be affirmed. He argued with me until eventually he affirmed and gave evidence.

The Tenant stated that R.B. lived with the Tenant "rent free" and that he was very generous with R. The Tenant stated that R. was disruptive and the Tenant asked him to move out.

The Tenant said that he had nothing to do with the May 11, 2016 incident wherein his guests were alleged to be selling items on the common property. He further claimed that he was not at the rental unit. He also stated that the R.B. was responsible for this incident and confirmed that R.B. was living with him at the time.

The Tenant confirmed that he was also not involved in the May 15, 2016 incident. He stated that neither was R.B. and that he had no knowledge of this situation.

In response to the Landlord's claims regarding the May 20, 2016 incident, the Tenant again stated that he was not there.

In terms of the May 22, 2016 incident, the Tenant confirmed that he and his girlfriend got into an argument on this date. The Tenant testified that due to his girlfriend's jealousy he asked her to leave. He said there was an exchange of words, but there was no violence. He confirmed that the police attended at that time.

The Tenant initially refused to comment on the June 7, 2016 incident citing he was advised to do so by his lawyer. He confirmed that he was charged with assault as a result of the events on that date. He also confirmed that he was released on an undertaking to keep the peace and be of good behaviour and to report to a probation officer. The Tenant testified that his first appearance date was in August of 2016.

The Tenant then said "hat what happened should not have happened." He claimed that he asked R.B. to leave and then R.B. became "snide and rude". The Tenant stated that he put his hand up, but did not assault anyone. The Tenant also stated that it was the other renters, A.H. and L.J., who were rude to him.

In response to the Landlord's evidence with respect to the threats made by J.M. the Tenant confirmed that J.M. was a good friend of his. He also stated that he met him while living at the rental building. The Tenant further confirmed that he was aware that J.M. was not permitted at the rental property. The Tenant confirmed that J.M. comes to the rental property to visit both the Tenant as well as other friends he has at the rental building. The Tenant stated that to his knowledge J.M. has not been charged with any criminal offence and that he has not witnessed J.M. make threats to the resident managers.

The Tenant stated that he "was aware of the contracts that he signed when he moved into the rental building" and stated that he has done his best to respect them. He stated

that he believes the Landlord is attempting to evict him so they can raise the rent due to recent development in the neighbourhood of the rental building.

In conclusion the Tenant stated that he has been able to take control of the situation, as well as his mental health and believes that the issues which arose previously will no longer affect his tenancy.

Analysis

Based on the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

I find that the Landlord has provided sufficient evidence to show that the Tenant or a 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.

I accept the evidence of L.P. that this has been a problematic tenancy, and that it has become intolerable since May of 2016. I accept her evidence that the Tenant and his guests have created an environment which unreasonable disturbs the other occupants and the Landlord's resident managers. I find that he has allowed his guests to create a disturbance in the common property as they collect, repair and sell items. I further accept the Landlord's evidence that the Tenant and his guests have engaged in physical altercations which has resulted in police attendance and at least one criminal charge. I also accept her evidence that the Tenant has permitted the former tenant, J.M., on the property, against the specific direction of the police, and that in doing so, he has facilitated J.M.'s abusive and threatening behaviour towards the Landlord's employees. I also find that the Tenant, in permitting J.M. on the property has also seriously jeopardized the health or safety or lawful right of the Landlord's agents.

I prefer the evidence of L.P. over the Tenant in areas where they disagree. I found L.P. to be forthright and responsive to my questions. Conversely, I found the Tenant to be evasive and ambiguous in his testimony. I also note that the Tenant failed to take any responsibility for his behaviour, or that of his guests, and that in each instance, he blamed others for the disturbances caused.

I also find that the Tenant was sufficiently warned by the Landlord that his tenancy was in jeopardy. I note that the Tenant was charged with assault after receiving the Notice. The Landlord submitted letters from numerous other renters who confirmed that the Tenant assaulted his friend R., and that he gestured that he would hit the elderly tenant,

L.J. I accept that this was very upsetting for L.J. as well as the other renters who witnessed the assault.

In all the circumstances, I decline the Tenant's request to cancel the Notice. The Notice is upheld and the tenancy shall end in accordance with the Notice.

Pursuant to section 55 of the *Residential Tenancy Act* I grant the Landlord an Order of Possession effective two (2) days after service on the Tenant. This Order must be served on the Tenant and may be filed and enforce in the B.C. Supreme Court as an Order of that Court.

Conclusion

The Tenant's application to cancel the Notice is dismissed. The Landlord is granted an Order of Possession effective two (2) days after service on the Tenant.

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: June 24, 2016

Residential Tenancy Branch