



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated May 18, 2016 ("1 Month Notice"), pursuant to section 47.

The two landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness FT" testified on behalf of the landlords at this hearing and both parties had an equal opportunity to question the witness. This hearing lasted approximately 119 minutes in order to allow both parties, particularly the tenant who spoke for most of the hearing time, to fully present their submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application and the tenant was duly served with the landlords' written evidence.

The landlords confirmed that the tenant was personally served with the landlords' 1 Month Notice on May 18, 2016. The tenant confirmed receipt of the 1 Month Notice on May 18, 2016. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlords' 1 Month Notice on May 18, 2016.

Preliminary Issue – Previous Hearing at the RTB

Both parties agreed that a previous hearing was held at the Residential Tenancy Branch ("RTB") on June 30, 2016. A decision of the same date was issued by a different Arbitrator, following the hearing. The decision adjourned the previous hearing to the current hearing date of August 12, 2016 because the digital evidence submitted by the tenant had not been received by the Arbitrator at the previous hearing and both parties consented to adjourn the hearing in order for the digital evidence to be received. This is the rescheduled hearing after the adjournment.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

At the outset of the hearing, I advised both parties about the rules of the conference, to respect each other and myself, that one person was to speak at any given time, that parties were not to interrupt while others were talking, and that both parties would be given a chance to speak. I advised both parties that as the Arbitrator, my role was to conduct and control the conference.

Throughout the hearing, the tenant repeatedly interrupted the landlords and me. The tenant also badgered and fought with witness FT during questioning and ignored my instructions to stop this behaviour. The tenant displayed rude and inappropriate behaviour. I repeatedly warned the tenant to stop his inappropriate behaviour but he continued. However, I allowed the tenant to attend the full hearing, despite his inappropriate behaviour, in order to provide him with an opportunity to present his application and respond to the landlords' submissions.

I caution the tenant not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings.

Issue to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to the documentary and digital evidence as well as the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 20, 2015. Monthly rent in the amount of \$500.00 is payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit. The rental unit is one room on the main floor of a two-level house. There are three other tenants living on the main floor with the tenant, one of whom is witness FT. There are three other tenants living in the basement of the same house. The tenant shares the common areas

of the main floor with the other tenants on the main floor, including a kitchen, living room and dining room.

The landlords issued the 1 Month Notice, with an effective move-out date of June 30, 2016, for the following reasons:

- *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 lawful right of another occupant or the landlord;*
 - *put the landlord's property at significant risk.*

The landlords stated that the tenant significantly interfered with and unreasonably disturbed other occupants, particularly witness FT, who has lived in the house for two years, and another "occupant DC," who has lived in the basement for seven years. The landlords said that they have attempted to mediate disputes between the tenant and witness FT, but the two tenants continue to fight, causing interference with other tenants in the house, who are afraid of the tenant. The landlords said that they cannot evict all of the other tenants in the house and that the tenant cannot get along with anyone else, such that other tenants are moving out. The landlords maintained that they advised the tenant to contact the police to deal with criminal complaints that the tenant made regarding assault by witness FT, but that no criminal charges have been laid or pursued by the tenant. The landlords explained that there were no problems with the tenants getting along in the house before this tenant moved in, and that the tenant constantly eavesdrops, follows and records witness FT.

The tenant testified that he gets along well with the other tenants in the house, with the exception of witness FT. The tenant testified that he has been bullied, verbally abused, and harassed by witness FT and that the landlords are blaming the tenant because he is a victim. The tenant submitted photographs and audio recordings of his altercations with witness FT. The tenant said that he does not follow witness FT, he only records from a distance, in order to prove his allegations. The tenant said that it is the landlords' duty to protect him from witness FT and they have failed in this regard.

The tenant said that he has contacted the police three times regarding incidents in the house. The tenant stated that on one occasion on May 17, 2016, when the tenant reported that witness FT spat on him and put his fist against the tenant's chin, the police officer misinterpreted the tenant's audio recording and did not believe the tenant. The tenant said that the second police occurrence was to report occupant DC who smashed a window, causing the tenant to suffer a leg injury, but no charges were filed by the tenant because he did not think that he had enough evidence for a prosecutor to go ahead with the case. The tenant said that the third occasion occurred on the weekend before this hearing where witness FT put his fist against the tenant's chin in a "pseudo-punch" but he did not file any charges because there were no physical marks

or bruising, such that he did not think that he had enough evidence for a prosecutor to go ahead with the case.

Analysis

Overall, I found the two landlords and witness FT to be more credible and forthright witnesses than the tenant. I found the landlords' and witness FT's testimony to be consistent, while the tenant provided conflicting testimony that continued to change throughout the hearing. Accordingly, where there was a conflict, I preferred the testimony of the landlords and witness FT over the tenant.

According to subsection 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on May 18, 2016, and filed his Application on May 27, 2016. Therefore, he is within the time limit under the Act. The onus, therefore, shifts to the landlords to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Section 28 of the Act deals with a tenant's right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

On a balance of probabilities and for the reasons stated below, I find that the landlords proved that the tenant significantly interfered with and unreasonably disturbed another occupant, witness FT, in the rental unit. I find that the tenant caused a loss of quiet enjoyment to witness FT, restricted his use of the shared kitchen area, and unreasonably disturbed and interfered with witness FT's privacy by following and recording him.

I find that the tenant's own audio recordings submitted for this hearing, show that the tenant constantly followed and recorded witness FT without consent. I find that the recordings further show that the tenant provoked confrontation with his comments to witness FT. The tenant said that he did not follow witness FT around the house and record him, yet the photographs submitted by the tenant are of witness FT from a very close range. Witness FT testified that the tenant "chases" him around the house and records him with his cell phone in order to be intimidating. The tenant frequently badgered witness FT in the audio recordings, asking him the same questions repeatedly. In one recording, the tenant confronted witness FT, asking if he

was drunk and why he was drinking in the middle of the day. In the same recording, the tenant advised witness FT that he knew his license plate if he had to report him for drinking and driving.

In many of the audio recordings, witness FT did not respond to the tenant's comments and appeared to be attempting to avoid confrontation. It is only with the tenant's constant badgering that witness FT is then heard responding to the tenant's questions and comments.

In other audio recordings, the tenant repeatedly told witness FT to leave the kitchen while the tenant was cooking because it was the tenant's time to use the space alone. The tenant stated that witness FT would insult his cooking and the smell of the ingredients he used. As noted above, both parties agreed that the main floor kitchen was a common shared space between the main floor tenants. Therefore, I find that witness FT's use of the common kitchen area was legitimate and that the tenant had no right to restrict or interfere with witness FT's use of the kitchen.

The tenant did not submit video evidence of his altercations with witness FT, only audio recordings and some photographs. In his audio recordings, the tenant alleged that witness FT spit on him but he did not produce video evidence of this occurring. Witness FT denied spitting on the tenant. Yet, the tenant questioned witness FT during the hearing, as to why witness FT did not submit any video or photographic evidence when witness FT admitted to having use of a camera on his own cell phone.

During the hearing, the tenant agreed that he blocked witness FT from removing his car from the driveway because he wanted to confront witness FT about a food mess that he did not clean up.

The tenant did not produce police records to show the complaints he made against witness FT. The tenant said that one of the police officers did not believe his story about witness FT.

As I have found that one of the reasons indicated on the landlords' 1 Month Notice is valid, I do not need to consider the other reasons on the notice.

Therefore, I dismiss the tenant's application to cancel the landlords' 1 Month Notice, dated May 18, 2016. I find that the 1 Month Notice complies with section 52 of the *Act*. I find that the landlords are entitled to an order of possession, pursuant to section 55 of the *Act*, effective at 1:00 p.m. on August 31, 2016. The landlords did not raise an issue that the tenant had not paid rent for August 2016. Based on this assumption, I find that the tenant is entitled to possession of the rental unit until August 31, 2016 if rent was paid in full to the landlords.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective **at 1:00 p.m. on August 31, 2016.**

Should the tenant or anyone 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.

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: August 22, 2016

Residential Tenancy Branch