



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 078478 BC Ltd.
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes CNC

Introduction

This was a review hearing with respect to the tenant's application to cancel a Notice to End Tenancy for cause. The tenant's application was originally scheduled to be heard by conference call on July 7, 2016. The landlord's representative called in and participated in the hearing on July 7th. The tenant did not attend the hearing. In the absence of an appearance by the tenant, his application was dismissed without leave to reapply and the landlord was granted an order of possession effective two days after service on the tenant.

The tenant applied for review consideration of the July 7, 2016 decision. By review consideration decision dated July 21, 2016, the tenant's application for review consideration was granted on the ground that the tenant was unable to attend the hearing due to circumstances that could not be anticipated and were beyond his control. The arbitrator ordered that the review hearing be conducted by holding a new conference call hearing with respect to the tenant's application. I was appointed to conduct the review hearing. The tenant attended with his advocate. The landlord's representative participated on behalf of the landlord and I heard evidence from the landlord's witnesses.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause dated May 31, 2016 be cancelled?
Is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?

Background and Evidence

The rental unit is a room in a single room occupancy hotel in Vancouver. The landlord served the tenant with a one month Notice to End Tenancy for cause dated May 31, 2016. The tenant acknowledged receiving the Notice to End Tenancy and he filed his application for dispute resolution to cancel the Notice to End Tenancy on June 7, 2016. The Notice to End Tenancy required the tenant to move out of the rental unit by June 30, 2016. The reasons for the Notice to End Tenancy were that the tenant has

significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Previously the landlord served the tenant with a one month Notice to End Tenancy for cause dated March 30, 2016. The stated reasons for the March 30 Notice one of the grounds stated in the June 30th Notice to End Tenancy. The other ground was that the tenant had put the landlord's property at significant risk. The tenant applied to dispute the March 30 Notice to End Tenancy. A hearing was conducted and in a decision dated May 13, 2016 an arbitrator allowed the tenant's application and cancelled the Notice to End Tenancy. The arbitrator excluded evidence submitted by the landlord on a USB flash drive because it was not provided to the tenant and because it contained documentary evidence not permitted to be submitted in digital form.

In the May 13, 2016 decision recounted the landlord's evidence as to cause for ending the tenancy and the tenant's evidence in reply. The arbitrator referred to an incident when the tenant discharged a fire extinguisher towards other tenants. The arbitrator said in her decision that:

In light of all of the above, I find there is insufficient evidence to end the tenancy for significant interference or unreasonable disturbance of other occupants or the landlord; or, putting the property at significant risk and I cancel the Notice with the effect that the tenancy continues at this time. Nonetheless, I find it appropriate in the circumstances to issue the following order to tenant pursuant to the authority afforded me under section 62 of the Act:

I order that the tenant is now considered to put on written notice that future incidents of unreasonably disturbing behaviour or significant interference of other occupants or the landlord may be grounds for the landlord to issue another 1 Month Notice to End Tenancy for Cause.

Finally, with a view to avoiding future disputes and to fulfill the landlord's obligation to provide the tenant with a means to access the residential property, and pursuant to my authority under section 62 of the Act:

I ORDER the landlord to provide the tenant with a fob for the main entry door for the residential property within three days of receiving this decision.

In the hearing before me the landlord's representative recounted the previous circumstances and the events relied upon by the landlord in support of the March 30th Notice to End Tenancy. The landlord submitted written statements from several occupants of the rental unit and I heard the affirmed evidence of the named witnesses called by the landlord. In the statements and oral testimony the landlord's witnesses

referred to past events, for the most part matters that occurred before the previous hearing on May 11, 2016.

At the review hearing the landlord's representative testified that the tenant has engaged in ongoing verbal abuse towards other occupants and the landlord's staff. The landlord's representative said that since the last hearing the tenant has continued to be aggressive and belligerent. The landlord's representative testified that the tenant has caused damage to the rental property. He referred to a video showing the door to the tenant's rental unit and the hallway outside the unit. He said that the door to the rental unit has been severely damaged and the walls in the hallway are marked and damaged; according to the landlord's representative this damage was caused by the tenant's bicycles and none of his neighbours own bicycles.

The landlord's witness, Mr. C.E. testified that the tenant has threatened him. He complained of noise from the tenant's unit and said that he appears to be running a bicycle shop in the unit. The witness said that the tenant threatened to cut him with a knife if he ever stole anything from the tenant. He said that he has been threatened and bullied him within the last couple of weeks. The landlord's witnesses each testified that they are frightened of the tenant and feel intimidated by him.

Analysis

The video evidence, witness statements and testimony at the hearing included an extensive recounting of events that occurred before the May 11th hearing. The witnesses presented testimony that the tenant continues to be belligerent and abusive, but there is scant evidence of any specific incidents since the May hearing save for statements that the tenant continues to be verbally abusive and other tenants are frightened of him. The landlord asserted that the tenant has caused property damage to the door of the rental unit and to the hallway outside the unit, but the landlord did not claim damage to property as ground for ending the tenancy. The video provided by the landlord does not establish that the alleged damage is new or that it was caused by the tenant. I do not consider the damage pictured to amount to sufficient cause to end the tenancy.

I accept the evidence of the landlord's witnesses that they feel intimidated by the tenant; his past conduct and the issuance of no contact orders support their concerns, but these matters were addressed in the May decision of the arbitrator and I do not find that there is convincing evidence of new incidents that support the grounds in the latest Notice to End Tenancy which was issued just a little more than two weeks after the last decision was rendered.

The tenant claimed in the Notice to End Tenancy dated May 31st that the tenant has significantly interfered with or unreasonably disturbed other occupants or seriously jeopardized the health or safety of others. I find that the landlord has not provided sufficient evidence of new incidents that would justify upholding the Notice to End

Tenancy. Accordingly I allow the tenant's application and order that the May 31, 2016 Notice to End Tenancy be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

Although I have found that the landlord has not provided sufficient evidence to establish that the tenant's conduct since May, 2016 constitutes grounds to end the tenancy. The landlord is at liberty to issue another Notice to End Tenancy for cause if there are any future incidents that the landlord reasonably considers would justify ending the tenancy.

I encourage the tenant to consider moving to other housing, bearing in mind the history of disputes with occupants of the rental property, the no contact orders that have been made by the court and the unease that is felt by other occupants of the rental property.

Conclusion

The tenant's application has been allowed. The Notice to End Tenancy has been cancelled.

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: October 06, 2016

Residential Tenancy Branch