



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC OLC O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated September 30, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 1 Month Notice to End Tenancy for Cause, dated September 20, 2016 (the "1 Month Notice");
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement; and
- other unspecified relief.

The Tenant was represented at the hearing by his father, N.S., and a mental health advocate, S.C. The Tenant did not attend the hearing in person. The Landlord attended the hearing on his own behalf and was joined by the property manager, J.M. All parties giving evidence provided a solemn affirmation.

The Tenant's father, N.S., confirmed the Application package was served on the Landlord by registered mail on October 4, 2016. In support, the Tenant provided a Canada Post registered mail receipt. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord is deemed to have received the Tenant's Application package on October 9, 2016.

The Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by regular mail on November 3, 2016. In support, the Landlord provided a copy of the front of an envelope. The Tenant's representatives denied having received this information. However, pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenant is deemed to have received the Landlord's documentary evidence on November 6, 2016.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

The Tenant's Application purports to dispute a notice to end tenancy for end of employment, and acknowledges receipt by the Tenant on September 20, 2016. However, the 1 Month Notice, a copy of which was submitted with the Landlord's documentary evidence, is clear that the Landlord is seeking to end the tenancy for cause. With the agreement of the parties, and pursuant to section 64(3) of the *Act*, I amend the Tenant's Application to dispute the 1 Month Notice submitted by the Landlord.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 1 Month Notice?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement?

Background and Evidence

A copy of the written tenancy agreement between the parties was submitted with the Landlord's documentary evidence. It confirms the tenancy began on February 1, 2006 and continues on a month-to-month basis.

The Landlord provided oral testimony in support of the 1 Month Notice. He testified that a number of incidents involving the Tenant lead to the decision to end the tenancy. First, the Landlord referred to an incident of "stalking" behaviour involving another tenant in the building. In support, the Landlord included a copy of a letter written by K.W., dated September 20, 2016. K.W. occupies a rental unit close to that of the Tenant. In the letter, K.W. describes "a few recurring problems" such as the Tenant singing and screaming in his rental unit, chasing her up the stairs, standing behind her in the laundry room until she noticed, and screaming at the tenant in the laundry room. S.M. stated that K.W. has indicated she may move out because of the Tenant's behaviour.

Second, the Landlord testified that the Tenant removed items from the building and dumped them into the garbage. In support, the Landlord included a letter from N.S., dated September 18, 2016. In it, N.S. describes seeing the Tenant take items from the building to the dumpster including window frames, linoleum, paint cans and a door.

Third, the Landlord provided oral testimony regarding an incident in March 2016 when the Tenant fell off his balcony. The incident was described in a written summary provided by the Landlord. The Tenant was observed to be walking on the railing of his balcony and fell off,

requiring hospitalization for several weeks. J.M. stated that this incident resulted in the tenant who witnessed the fall moving out of the building.

As a result of these incidents, the Landlord testified he issued the 1 Month Notice, which was served on the Tenant by posting a copy to the door of the Tenant's rental unit on September 20, 2016. The Tenant's Application form acknowledges receipt of the 1 Month Notice on that date.

In reply, the Tenant's father advised the tenancy has been in place for 10 years, and that his son has been a good tenant. He acknowledged that the police removed the Tenant from the rental property after the dumpster incident, but advised that was for his own safety. He was taken to the hospital, not arrested.

In addition, S.C., the Tenant's mental health advocate, advised an Assertive Community Treatment ("ACT") team is working to support the Tenant. This is a multi-disciplinary team that supports the Tenant in the community in various ways including ensuring medications are taken as appropriate, ensuring the Tenant attends appointments, and responding quickly if the Tenant starts to decompensate. S.C. advised the Tenant has responded well to the involvement of the ACT team.

In response to the evidence submitted by N.S. and S.C., J.M. stated that she understands the difficulties presented by the Tenant's mental health issues, but needs to consider the safety and needs of other tenants. The Landlord wishes to end the tenancy.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause for the reasons listed therein. In this case, the Landlord wished to end the tenancy on the bases that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Landlord provided oral testimony and documentary evidence, which I accept, that describes various behaviours and activities by the Tenant. I find these behaviours have unreasonably disturbed other occupants of the building and the Landlord. Accordingly, the 1 Month Notice is upheld and the Tenant's Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord if the notice complies with section 52 of the *Act*. Having reviewed the 10 Day Notice, I find it complies with section 52 of

the *Act*. Accordingly, by operation of section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

The Tenant also sought an order that the Landlord comply with the *Act*, which I find is not necessary to address as the tenancy is ending based on the 1 Month Notice.

Conclusion

The 1 Month Notice is upheld and the Tenant's Application is dismissed.

By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in 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: November 23, 2016

Residential Tenancy Branch