



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; two agents for the landlord; and two witnesses for the landlord.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on September 1, 2013 for a month to month tenancy beginning on September 1, 2013 for a monthly rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid.

The landlord also confirmed that they took possession of the residential property on January 2, 2014.

Both parties submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on October 1, 2016 with an effective vacancy date of October 31, 2016 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord and jeopardize a lawful right or interest of another occupant or the landlord.

The landlord submitted that since the start of the tenancy the tenant has been a problematic tenant. The landlord submitted that on 3 occasions the police have been called to the property resulting from the actions of this tenant.

The landlord submitted that the tenant has been selling illegal drugs from the rental unit and as a result other occupants are being disturbed by the number of people coming and going from the rental property. The landlord also testified that the tenant has threatened to beat up other occupants and the landlord's onsite agent.

The landlord's witness RS testified that when he had been working on the roof on the residential property in April his co-worker went to the door of the subject rental unit and he saw his co-worker purchase crack cocaine from someone in the doorway of the rental unit. The witness stated he did not see specifically who sold the drugs.

The tenant acknowledges that he does smoke marijuana but he does not sell drugs. The landlord confirmed that they have not report the tenant's drug selling activities to police because their responsibility is to the other occupants of the property who are being bothered by the tenant's behaviour and the volume of people coming and going from his rental unit.

The landlord could provide no explanation as to why they have not reported the alleged sale of illegal drugs to police since the Notice was issued on October 1, 2016 other than to explain that it is difficult for police to make a case against drug dealers.

The landlord has provided no witness statements or any witnesses who testified that any of the tenant's activities related to either the use or sale of illegal drugs has caused any disturbances or has had any impact on the other occupants or the landlord of the residential property.

The landlord also submitted that the tenant repeatedly disturbs other occupants in the building and that a year previously he had assaulted another occupant of the building. The tenant submitted that it was the other occupant who had instigated the problems and that tenant was simply defending himself.

The tenant does admit to stomping on the floor on 1 or 2 occasions as noted in the written statements of two other occupants of the residential property. However, the tenant states that he only did so during episodes of spousal abuse in the unit below him. The tenant stated he did not report any spousal abuse to the police.

The landlord also submitted that the onsite agent has been threatened by the tenant and she should not have to work in an environment where she feels unsafe. In support of this the landlord arranged for their witness MM to attend the hearing.

The witness MM testified that she has heard the tenant speak to the landlord's agent in a manner that is not acceptable or proper. She stated that she has heard the tenant swearing at the onsite agent. MM testified that she has not heard the tenant threaten the onsite agent.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Based on the testimony of both parties I am not satisfied the landlord has established the tenant has committed the illegal act of selling drugs. I find it is unlikely that if the landlord truly felt the tenant was selling drugs on the property that at some point they would not have reported it to the police.

I accept the tenant's testimony that he does smoke marijuana in the rental unit. He provided no evidence that he has a medical purpose for smoking marijuana and as such, I find the tenant has admitted committing an illegal act.

However, I find the landlord has failed to provide any evidence whatsoever that if the tenant was selling drugs or even just smoking marijuana that he has had any impact on other occupants or the landlord. As such, I find that this ground to end the tenancy is not supported.

In regard to any threats or the landlord's allegation that the tenant initiated a physical assault a year ago, I find the landlord has failed to establish either of these events has occurred. Or in the alternative, if the tenant was responsible for a physical assault a year ago why the landlord did not attempt to end the tenancy at that time.

However, I do find from the tenant's own testimony that he has been unreasonably disturbing other occupants of the property when he deliberately stomps or pound on the floors. I find it completely unreasonable that an individual would respond to what he believes as spousal abuse by making noise and not reporting it to police.

In addition, the tenant has provided no evidence that he has complained to the landlord regarding being disturbed by the other occupants. Again, I find it unlikely that a person being disturbed by other occupants would not have at least once mentioned it to the landlord if there was an ongoing occurrence.

I also find, from the totality of the testimony of the landlord and their witness MM that the tenant has a predisposition to overreact to things that he finds as bothersome.

As such, I find the landlord has established that they have cause to end this tenancy in that the tenant has significantly disturbed other occupants in the residential property and as a result he has seriously jeopardized the other occupants' right to enjoy quiet enjoyment of their rental units.

As such, I dismiss the tenant's Application for Dispute Resolution to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on October 1, 2016.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on October 1, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

As I have dismissed the tenant's Application for Dispute Resolution and I have found the 1 Month Notice complies with the requirements of Section 52, I find the landlord is entitled to an order of possession.

Conclusion

I grant the landlord an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: December 6, 2016

Residential Tenancy Branch