



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1048954 BC LTD
name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47 and to recover the filing fees pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. As both parties were in attendance I confirmed there were no issues with service of the notice of dispute resolution. In accordance with section 89 of the *Act*, I find that landlord was duly served with the tenant's application. As the tenant confirmed that he received the landlord's 1 Month Notice, I find that the tenant was duly served with that Notice in accordance with section 88 of the *Act*.

At the outset of the hearing, the landlord argued that this tenancy falls outside of the *Act*, as the living accommodations are transitional housing, and therefore outside of my jurisdiction.

Issue(s) to be Decided

Does the tenant's application fall within the provisions of the *Act*?

If so, is the tenant entitled to cancellation of the 1 Month Notice pursuant to section 47?

If not, is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

This tenancy began on or about September 16, 2016 on a month-to-month basis. The monthly rent is \$650.00 payable on the 3rd Wednesday of the month. A security deposit of \$325.00 was paid by the tenant and the landlord continues to retain this amount.

The rental unit is a single-detached home in a residential neighborhood. The residents share a washroom, kitchen and common areas of the house with each resident having private bedroom quarters.

The landlord testified that there is a written tenancy agreement setting out the house rules and regulations. The landlord characterized the tenancy as a "harm-reduction house" stating that it is intended for at-risk and vulnerable individuals. The landlord testified that it was their hope that the residents would eventually develop life skills in order to find and maintain residential tenancies elsewhere.

The landlord has checked off the reasons to end the tenancy in their 1 Month Notice. The listed reasons are that the tenant has allowed an unreasonable number of occupants in the unit and the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety or lawful right of another occupant or put the landlord's property at significant risk.

The landlord testified that since the tenant had moved in there have been a large number of people coming to and from the tenant's unit. Some visitors would stay overnight while others would attend for briefer periods of time. The landlord stated that as a harm-reduction house the residents are particularly vulnerable and having guests that may be actively using drugs is a particular concern. The landlord testified that there have been complaints from other residents about noise and there have been several verbal warnings issued to the tenant.

The landlord testified that on one occasion an individual who had an active restraining order preventing him from attending at the rental unit attempted to visit the tenant and the police were called. The individual left the premises before the police attended. The landlord testified that she was unaware of other occasions where the individual attempted to visit the tenant at the rental unit. However, there are no permanent staff on site at the building and the landlord is unaware of what other visitors may have attended the rental unit.

The tenant testified that he is not aware of any requirement that the tenancy is time-limited. He stated that he is not currently involved in any programs, therapies or counselling as a part of his tenancy. The tenant testified that he is skilled at grinding

and fixing dentures and many of the visitors who attend the rental unit are seeking his services. Other visitors are friends or part of the tenant's social circle. The tenant testified that if he is aware that some guests are not allowed on the premises due to legal restrictions he would make arrangements to meet elsewhere. The tenant confirmed that some visitors may stay overnight. He does not recall any instances of visitors coming to the rental unit after 10pm.

Analysis - Jurisdictional Question

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of my findings around each are set out below.

Section 4(f) of the *Act* provides that the *Act* does not apply to living accommodations provided for transitional housing. The *Residential Tenancy Regulation* defines transitional housing in section 1(2) as accommodations that are provided:

- (a) on a temporary basis,
- (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and
- (c) together with programs intended to assist tenants to become better able to live independently.

I note that while the landlord issued a 1 Month Notice on the form prescribed by the Residential Tenancy Branch the landlord testified that they did so out of convenience and expediency and was not an admission that the tenancy fell within the *Act*.

I am not satisfied with the landlord's explanation as to how the current tenancy could be described as transitional. While I accept the evidence of the landlord that their intention is to offer tenancy to vulnerable individuals I find no evidence of a transition plan or time frame whereby this tenancy would end. The landlord provided no evidence of programming, therapy or counselling offered to the residents. There is no evidence of how and when a resident might transition out of this housing arrangement. There is no evidence of how the tenants would gain the necessary skills in order to transition to a more standard tenancy.

The tenant testified that he understood the tenancy to be a regular tenancy and not simply a temporary arrangement. The tenant provided no evidence of working towards a goal of eventually moving out of the current tenancy arrangement.

Based on the evidence provided me by the parties, I find that this tenancy remains within the *Act* and does not constitute transitional housing. I am not satisfied that the landlord has provided sufficient evidence to demonstrate that the features of this tenancy are transitional and outside my jurisdiction as per section 4(f) of the *Act*.

Analysis - Application to Cancel the 1 Month Notice

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has allowed an unreasonable number of occupants in the unit and the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety or lawful right of another occupant or put the landlord's property at significant risk.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy as neither the tenant nor anyone permitted onto the property by the tenant have unreasonably disturbed another occupant or landlord, seriously jeopardized the health or safety of another occupant or landlord, nor put the property at significant risk.

There is no evidence that the tenant has allowed an unreasonable number of occupants in the unit. The evidence of both the landlord and tenant is that there are a large number of visitors coming to and from the rental unit with the occasional overnight stay. However, there is no evidence that these visitors attend the unit all at once or with a frequency that is unreasonable.

I accept the evidence of the parties that there are a large number of visitors to the tenant's rental unit. I accept the evidence of the tenant that many of these visitors are seeking the tenant's services to file and adjust dentures and consequently there can be some noise to the other residents. I do not find that there is sufficient evidence that the noise constitutes a significant interference of the other residents.

I do not find that the landlord has demonstrated to the extent necessary that the number, frequency and character of the visitors constitute a significant interference to the other occupants, a serious jeopardy to their health or safety, or a significant risk to the property.

Conclusion

I find that this tenancy is covered under the *Act*.

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 12, 2016

Residential Tenancy Branch