



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause dated October 14, 2016. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The hearing was held over two dates. At the end of the first hearing date I ordered the landlord to produce the video footage of an alleged assault that took place on the property on September 20, 2016 and I authorized the landlord to provide additional evidence with respect to incidents that allegedly took place after the 1 Month Notice was issued. An interim decision was issued and should be read in conjunction with this decision.

At the commencement of the reconvened hearing I confirmed that the landlord had served the tenant with the video evidence and the additional evidence during the period of adjournment. I also confirmed that the video footage had been viewed by the tenant and his Advocate prior to the reconvened hearing. Despite viewing the video footage the tenant maintained his position that he was acting in self-defence on September 20, 2016. Accordingly, I proceed consider the testimony, evidence and submissions from both parties as to what took place on September 20, 2016.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or set aside?

Background and Evidence

The tenancy commenced on October 1, 2006 with a former landlord. In 2011 the current landlord took over management of the building. The building is used to provide

housing to tenants of low income and/or disabilities pursuant to an operating agreement with BC Housing. The tenant is currently required to pay subsidized rent of \$320.00 on the first day of every month.

On October 14, 2016 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) to the tenant and sent it to him via registered mail. The tenant filed to dispute the Notice within the time limit for doing so.

The Notice has a stated effective date of November 30, 2016 and indicates the reasons for ending the tenancy are as follows:

- 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
- 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

The landlord submitted that the tenant's conduct had been troublesome for quite some time before the Notice was issued, and afterwards, including incidents of: excessive noise, damaging property, and assaulting another tenant; however, the decision to issue the 1 Month Notice was made after the landlord investigated the reports and video of a physical assault upon the landlord's maintenance man that took place on the residential property on September 20, 2016. The tenant acknowledged some of the troublesome conduct described by the landlord but denied other allegations. Given the seriousness of an allegation of assault upon one of the landlord's staff persons, the majority of the hearing time was spent and this decision largely focuses on the alleged assault of the maintenance man by the tenant.

It was undisputed that on September 20, 2016 the maintenance man entered the elevator in the lobby area of the property and the tenant was already in the elevator. It was also undisputed that an altercation between the two men ensued inside the elevator and that there is no video coverage of the inside of the elevator. The video footage is limited to the lobby area only. It was undisputed that there were two other tenants who witnessed some of events that took place outside of the elevator.

Below, I describe the maintenance man's and the tenant's version of events as they relate to the alleged assault, and other evidence provided for my consideration.

The maintenance man testified that when he entered the elevator the tenant preceded to point at and swear at him, and then the tenant tried grabbing the maintenance man around the neck and tried hitting him in the head. The maintenance man reacted by pushing the tenant away from him. Then the tenant tried pulling the maintenance man out of the elevator to further engage in a physical altercation. The maintenance man's injuries included black eye. He stated that he now tries to avoid the tenant as he is fearful of him. The maintenance man testified that he has been an employee for approximately 10 years and has never before had a problem or altercation with a tenant.

The incident report written by the maintenance man on September 21, 2016 states:

"At 10:10 pm I was entering the elevator to go to the 9th floor. As I went in [name of tenant] was inside the elevator. Immediately he started yelling at me calling me Fuck and asso and he hits me on the face below my left eye. I wanted quickly exit the elevator. I push [name of tenant] to get out. I was very scared and feared for my life. Still after [name of tenant] was threatening me screaming and pushing me. At that moment [names of two other tenants] came out of their suits. They witness everything."

A photograph of the maintenance man's black eye and the police file number were also provided as evidence by the landlord. The landlord acknowledged that criminal charges have not been pursued at this time.

Neither of the witnesses was called to testify but one of them purportedly wrote an incident report, which was included in the landlord's documentary evidence but the other witnesses is afraid to identify herself. The incident report purportedly written by one of the witnesses does not indicate the name of the person writing the report, or a unit number. It states the following:

"Woke up Tue to shouting that sounded like a fight was happening in the hallway beside the apts next to mine – so went to check – there was an older man shouting with staff then he (the tenant) started to shout more – into verbal abuse and moved forward to push & shove and hit staff who back up again – tenant went after him even though I said to not hit staff and to deal with it thru office – tenant went after staff very aggressively so I block in between so that staff was back far enough to be protected and told tenant to go home and stop fight as it was an inpropreate [sic] way. A woman from the apt across the hall came out to check as she thought I was being attack which was nice but all was fine shortly

as staff went back to work and tenant went to his place. Note: staff looked shock up a[t] the aggression level directed at him as he kept having to back up.”

The tenant’s Advocate submitted that one of the witnesses is actually afraid of being evicted by the landlord if she were to testify. The Advocate also submitted that one of the witnesses recently wrote a letter in support of the tenant. The letter was provided too late to be included as documentary evidence but the Advocate read from the letter during the hearing. In the letter the witness writes that the tenant is not violent unless he is “pushed into it”.

The tenant submitted that the maintenance man assaulted him first in the elevator and that his actions that followed constituted self-defence. The tenant claims that the maintenance man pushed him in the chest and the tenant was knocked backward out of the elevator. As a result the tenant pushed the maintenance man back and a scuffle ensued. The tenant stated that he has had a conflict with the maintenance man for the past two years over an overflow valve that was not fixed correctly. The tenant acknowledged that he was very angry with the maintenance man when he would not admit something was wrong with the overflow valve.

When asked how the altercation ended the tenant stated than it ended when a witness intervened.

The tenant acknowledged that he has anger issues but submitted that he is working with a counsellor. The tenant’s counsellor wrote a letter that acknowledges the tenant is seeking counselling for anger and alcohol use but that the tenant feels unjustly accused of assault since he did not start the fight. The counsellor points out that the tenant needs to maintain a safe and consistent place to live in order to continue providing outreach work in the community.

The tenant also supported four letters purportedly written by other tenants of the building. The letters indicate they have not had any problems with the tenant and he has been nice to them.

The tenant’s Advocate pointed out that with previous issues with the tenant’s conduct at the property the tenant would acknowledge the conduct and write an apology letter; but, the tenant has not acknowledged responsibility for this incident. The tenant’s Advocate also pointed out that the landlord had produced multiple incident reports that were written by the same complainant about the same incident on December 1, 2016 and calling into question the landlord’s evidence gathering techniques.

The landlord pointed out that the landlord has a duty to protect its employees from being injured while working. The maintenance man is reluctant to work around the tenant and now carries a phone and panic button. Further, the landlord provides independent housing and is not equipped to provide supportive housing. The landlord suggested that given the tenant's issues with anger management and alcoholism he may be better suited to supportive housing.

The landlord requested an Order of Possession to be effective on January 31, 2017. The tenant requested that he be provided more time to move if I uphold the Notice and suggested February 28, 2017 would help avoid homelessness.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove that the tenancy should end for the reason(s) indicated on the Notice. The reasons indicated on the Notice issued to the tenant correspond to reasons for ending a tenancy as provided under section 47 of the Act.

The landlord's burden of proof is based on a balance of probabilities. The tenant is accused of physically assaulting the landlord's maintenance man on September 20, 2016. I accept that physical assault is an illegal activity. In this case, the tenant has not been criminally charged or convicted of assault; however, that is not a prerequisite for terminating a tenancy. Residential Tenancy Policy Guideline 32: *Illegal Activities* provides, in part:

"The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities."

The landlord submitted and I accept that a landlord has a duty to protect the health and safety of the people appointed to carry out the duties of the landlord. Accordingly, I find that a physical assault or threatening behaviour toward one of the landlord's staff persons would constitute significant interference with the landlord and the landlord's lawful rights. I also accept that an assault is an illegal activity, even if a formal criminal charge has not been laid, and that seeing or hearing a tenant assault another person on the residential property would adversely affect the quiet enjoyment, security, safety of another occupant. Accordingly, should the landlord establish that the tenant assaulted

the maintenance man as alleged I find there would be sufficient grounds for eviction under section 47 of the Act and as indicated on the subject 1 Month Notice.

I heard from both the maintenance man and the tenant opposing versions of events as to what took place inside the elevator, with each of them pointing to the other as being the aggressor or starting the altercation. As for what took place outside of the elevator, much of that interaction was captured on video tape that I have viewed. Since the two witnesses were not called to testify and the incident report purportedly written by one of the witnesses was anonymous, I have placed the greatest evidentiary weight on the video tape in deciding which party's version of events to be more likely.

With respect to the video footage, in particular video file numbers 160921221848 and 160921221923, it is clear to see that it is the tenant who is pursuing the maintenance man after they exit the elevator. The tenant claims to be acting in self-defence yet he does not flee from the scene when he has the opportunity. Rather, he approaches the maintenance man aggressively on multiple occasions, waving his arms or swinging at the maintenance man and apparently shouting. From what I see in the video, the maintenance man's body language appears to be non-confrontational toward the tenant as the maintenance man appears to try to leave the scene. The two witnesses can be seen in the video and it is obvious that one witness is trying to keep the tenant away from the maintenance man.

Upon viewing of the video footage and considering the tenant acknowledged he was angry with the maintenance man I find I prefer the maintenance man's version of events. Accordingly, I find on the balance of probabilities that the tenant assaulted the landlord's maintenance man and continued to act threateningly toward the maintenance man despite having an opportunity to walk away. Therefore, I find the landlord has satisfied me that the tenancy should end for the reasons indicated on the Notice to End Tenancy and I uphold the Notice.

In light of the above, I dismiss the tenant's application to cancel the 1 Month Notice.

Pursuant to section 55(1) of the Act, I must provide the landlord with an Order of Possession where a tenant's application to cancel a Notice to End Tenancy is dismissed or the Notice to End Tenancy is upheld and the Notice meets the form and content requirements of section 52 of the Act.

I have upheld the Notice and dismissed the tenant's application to cancel the 1 Month Notice. Upon review of the Notice to End Tenancy submitted as evidence by both parties, I find that it meets the form and content requirements of the Act. Accordingly, I

provide the landlord with an Order of Possession with this decision. I view assault upon a landlord's staff person to be very serious and I am of the view that the tenant has had a considerable amount of time since the Notice was issued to him to seek alternative accommodation. Therefore, I grant the landlord's request for an Order of Possession effective on January 31, 2017.

Conclusion

I have upheld the 1 Month Notice and dismissed the tenant's application to cancel it.

The landlord has been provided an Order of Possession effective on January 31, 2017 as requested.

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: January 24, 2017

Residential Tenancy Branch