



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 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.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence. The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find the tenant was duly served with copies of the landlord's evidence.

The landlord testified that the 1 Month Notice to End Tenancy for Cause ('1 Month Notice'), with an effective date of January 31, 2017, was personally served to the tenant on December 6, 2016. The landlord entered into written evidence a copy of that Notice as well as a Proof of Service. The tenant indicated during the hearing that she received the 1 Month Notice as stated by the landlord. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings are set out below.

The landlord submitted a copy of the written tenancy agreement as part of their evidence. This one year, fixed term tenancy began on November 1, 2016, with monthly rent currently set at \$620.00 per month, payable on the first of each month. A security deposit in the amount of \$310.00 was paid to the landlord on October 19, 2016.

The landlord served the tenant with a 1 Month Notice on December 6, 2016, with an effective date of January 31, 2017. The landlord cited the following reasons for the issuance of the 1 Month Notice:

1. *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,*
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and*
 - (iii) put the landlord's property at significant risk.*
2. *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord testified that the tenant had breached a term of the tenancy agreement, specifically the Crime Free Housing Addendum, which the landlord provided as part of their evidence. The landlord testified that there have been multiple occasions when the tenant's ex-boyfriend was violent towards the tenant, which threatened the safety and welfare of other occupants in the building. The landlord entered into evidence a warning letter, dated November 27, 2016, which was handed to the tenant on November 27, 2016 informing her that there would be no tolerance for the behaviour that happened on November 26, 2016 at 7:45 p.m. involving the tenant's ex-boyfriend. The tenant was warned that she would be evicted if this should happen again.

The landlord was concerned that the tenant is vulnerable, and does not have the ability to avoid contact with her ex-boyfriend. The landlord submitted a letter she had received from the tenant dated December 3, 2016, requesting that her ex-boyfriend be allowed to move back into the rental suite with her. This letter was provided in the landlord's evidence.

The tenant's advocate testified during this hearing that the tenant no longer has contact with her ex-boyfriend, and that her sister is now back in her life. The tenant testified that she suffered from anxiety, and let people bully her, including her ex-boyfriend. She

testified that she was unaware of his lengthy criminal record, and did not dispute the landlord's submissions about how it was a breach of the contract by allowing him to live with her when he was very abusive towards her. She testified that she now has a no contact order with her ex-boyfriend, and that they were "done". She testified that she does not engage in any illegal activities herself, and she apologized for her behaviour.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlords' 1 Month Notice. When a landlord issues a 1 Month Notice, and the tenant applies to cancel this notice, the burden of proof to justify ending this tenancy is on the landlord.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In this case, the landlord has maintained that the tenant's failure to regard the landlord's warning about contact with her violent ex-boyfriend constituted a breach of a material

term of the Agreement. Despite the fact that it was made clear that there would be no tolerance for violence in this housing complex, the tenant requested from the landlord that her ex-boyfriend be allowed to move back into the rental unit after the previous incident and warning letter. The landlord submits that this behaviour demonstrates the tenant's inability to abide by the tenancy agreement, and in turn, seriously jeopardizes the health and safety of both the tenant, and others around her.

The landlord submitted correspondence between her and the tenant in this dispute to show how the expectations and consequences were very clear to the tenant about breaching the terms of the tenancy agreement. The tenant did not dispute this, nor did she dispute the fact that her ex-boyfriend posed a risk to herself and other occupants of the building.

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The tenant made her application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. Accordingly the burden of proof falls on the landlord to justify that there is sufficient cause to end this tenancy on the grounds provided on the 1 Month Notice.

As the landlord provided undisputed testimony that the tenant did in fact breach a material term of the tenancy agreement, as well as seriously jeopardizing the health and safety of herself and other occupants, I find that I cannot allow the tenant's application to cancel the 1 Month Notice.

The tenancy has come to an end as per the effective date on the 1 Month Notice, January 31, 2017. Accordingly I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice.

I find that the landlord's 1 Month is valid and effective as of January 31, 2017. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed 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: February 3, 2017

Residential Tenancy Branch