



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aboriginal Housing Society of Prince George
and [tenant name suppressed to protect privacy]

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 and an agent 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 submitted into evidence a copy of a tenancy agreement signed by the parties on April 9, 2010 for a month to month tenancy beginning on June 1, 2010.

Both parties submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on April 3, 2017 with an effective vacancy date of May 31, 2017 citing the

tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and 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.

The landlord submitted that the tenant had been arrested and several charges were laid against him including charges for having restricted weapons and possession of drugs for the purpose of trafficking. The landlord has submitted their file notes that state the police would not be able to share police records on these issues due to privacy but that the landlord could look at the Court Services Website and print off the charges from there.

I note the landlord submitted a print out from this page showing the tenant was charged with 8 counts and that on 4 of those counts there was another party named in addition to the tenant. The tenant testified that his lawyer has confirmed there are only 4 charges against him.

The landlord also submitted copies of additional documents including a fax coversheet from the local police; 3 pages of charges listed against both the tenant and his co-accused; a copy of two separate documents entitled "Report to a Justice (following seizure of property and/or warrant to search)"; a copy of a "Warrant to Search"; and copies of two separate documents entitled "Major Exhibit Flowchart" (one indicates evidence found at the tenant's rental unit and one indicates evidence found in the tenant's vehicle).

I note the charges list indicates that there are 9 charges against the tenant including possession for the purposes of trafficking of heroin; cocaine; methamphetamine; possession of a loaded firearm without a permit or license; storage of a prohibited device; storage of ammunition in a careless manner; and 3 counts of storage of a rifle in a manner contrary to the law.

The landlord submits that as a result the tenancy must end because the tenant has jeopardized the health safety or lawful right of other occupants or the landlord and the illegal activity adversely affects the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The landlord explained that because the tenant is charged with possession of "meth" for the purpose of trafficking and it is a dangerous drug. The landlord raised concerns also of possession of firearms and ammunition.

The tenant submitted that any of the drugs found at his residence were either over the counter medications or prescription medications of his own. He further stated that none of the illegal drugs found were found at his rental unit but rather at the other residential property that the police searched on the day of his arrest.

In support of this position the tenant submitted pages 5 and 6 of a 6 page document entitled "Report to Crown Counsel Narratives". In this document it states the police found an ounce of methamphetamine in the centre console of the tenant's truck and ammunition and steroid paraphernalia were found in the tenant's residence. The document goes on to state that a small amount of meth and cocaine, a double barrel shotgun and a .303 British rifle were found at a different location.

The document further records that police obtained another search warrant for a third location where they found a sizable quantity of methamphetamine and crack cocaine; several rounds of ammunition; three rifles; and a digital safe which contained additional methamphetamine; cocaine and heroin cut with fentanyl; marijuana, and a ".40 cal glock pistol" with a prohibited high capacity magazine.

The landlord questions why the document submitted by the tenant did not include the first 4 pages and why a portion of page 5 was blacked out. The tenant stated that he only submitted the portion of the document relevant to his position and that the blacked out portion was that way when he received it from police.

Analysis

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

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. 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.

Residential Tenancy Policy Guideline #32 states the term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which

is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. The party alleging the illegal activity has the burden of proving that the activity was illegal.

The guideline goes on to say that in considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

The guideline states that in addition, the illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

The Guideline explains 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.

In the case before me, I am satisfied, on a balance of probabilities, that the tenant has committed an illegal activity and that the activity occurred, at least in part, in the rental unit.

However, while neither party provided testimony on the nature of the rental unit or the residential property, I find, based on the address provided in the tenancy agreement; the Notice to End Tenancy and the tenant's Application for Dispute Resolution, that on a balance of probabilities, the rental unit is a single family dwelling.

As I have found the property is a single family dwelling, I find there are no other occupants on the residential property that the landlord has any obligation to under the *Act*. Furthermore, even if there are other occupants on the residential property I find the landlord has failed to establish how the tenant's illegal activities give rise to the causes identified on the Notice to End Tenancy.

I am not satisfied that just because "meth" may be a dangerous drug it means the tenant has caused any disturbance to any other occupants or the landlord's health, safety or lawful rights or the quiet enjoyment, security, safety or physical well-being of another occupant.

As such, I find the landlord cannot rely on the causes that the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the another **occupant**, or the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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.

Additionally, I find the landlord has also failed to provide any evidence to establish that any of the tenant's activity seriously jeopardizes the health or safety or lawful right or interest of the **landlord**.

I note the landlord used a 1 Month Notice to End Tenancy for Cause that is not the current form available from the Residential Tenancy Branch website. The Notice used by the landlord was published in 2011 but the Branch revised this Notice in December 2016.

In the Notice issued by the landlord the notice states that the landlord can end the tenancy if:

"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**." [emphasis added]

However, this wording is inconsistent with the legislation and the revised Notice to End Tenancy states:

“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.**” [emphasis added]

As a result, I make no findings on this cause as it relates to adversely affecting the landlord’ quiet enjoyment, security, safety or physical well-being..

Based on the above, I find the landlord has failed to provide sufficient evidence to establish cause to end this tenancy.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on April 3, 2017 is cancelled and the tenancy remains in full force and effect.

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: May 18, 2017

Residential Tenancy Branch