



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC, O

Introduction

This hearing was convened to deal with an application by the tenant under the *Residential Tenancy Act* (the “Act”) seeking an order cancelling a 1 Month Notice to End Tenancy for Cause dated April 10, 2017 (the “1 Month Notice”). The tenant’s application also indicated that he sought “other” relief and at the outset of the hearing he indicated that he sought monetary compensation for the time he had been required to take off work to bring this application.

The tenant attended the hearing with his sister, who lives in the same building. The landlord was represented by an agent. Another tenant, who is also the landlord’s on-site contact, attended as a witness. Both parties had full opportunity to be heard, to present affirmed testimony, to make submissions and to present documentary evidence.

Service of the tenant’s application and notice of hearing was not at issue.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to monetary compensation?

Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began in October of 2015, although the tenant had been residing with his mother in another unit in the same building before then. This is a month to month tenancy with rent of \$640.00 payable on the first of each month. A security deposit of \$320.00 was paid at the beginning of the tenancy and remains in the landlord’s possession.

The 1 Month Notice was posted on the tenant’s door on April 11, 2017. The tenant filed his application to dispute the 1 Month Notice on April 18, 2017. The 1 Month Notices

indicates that the tenant has, pursuant to s. 47(1)(d), “significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property” and “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.”

The 1 Month Notice also alleges that, pursuant to s. 47(1)(e), 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” or “has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.”

At the hearing the landlord also alleged that the tenant has breached the addendum to the tenancy agreement, which requires him not to engage in “any criminal activity that threatens the health, safety, or welfare of the landlord, other residents or persons on the residential property or residential premises.”

The landlord’s agent submitted that the tenant has been causing fear and violence in the building and that the tenancy should be ended for that reason. He relied on three letters from tenants and two incidents involving police (in that the police had attended), both of which have been assigned file numbers that were provided. One incident occurred on February 10, 2017 and the other on April 7, 2017. The landlord also relied on testimony from JG, another tenant, who is the landlord’s on-site contact as there is no building manager.

In written submissions the landlord characterizes the February 10 incident as involving a call to the police by another renter who was accusing this tenant of threatening him or her. Although JG was not present during this alleged incident, he testified that he had heard from another renter that this tenant went into another unit and assaulted someone with a baseball bat. The landlord’s agent advised that charges have not been pressed and the police file has been closed.

The April 7, 2017 incident involved an interaction between the tenant and two guests of another renter. It occurred around or near the residential property. JG did not witness the April 7 incident either but did see what he characterized as its “aftermath.” He said that when he arrived at the scene one of the two guests was bleeding, that they yelled at him to call the police, and that they told him that their assailant, whom they identified as the applicant tenant, had fled the scene in a vehicle. JG also said that one of the guests was taken to hospital.

JG also testified that there have been “other instances of the tenant’s threatening other tenants” and that he has seen the tenant yelling at other renters but does not know if he’s been physical with them.

The April 7 incident is referred to in letters from three other tenants in the building. All of the letters are either anonymous or have had the writer’s name redacted. The agent advised that this was because these tenants were fearful for their safety. One of these statements is dated April 9, and begins: “In light of the events that happened here Friday night . . . I would like to make my concerns known to you.” The writer then relates having witnessed many “angry outbursts” and verbal threats by the tenant to many different people and states in part:

I feel this young man is disturbed and unpredictable, which makes him dangerous. He is very angry and makes me uncomfortable. I am fearful of coming into contact with him, not knowing, wondering if he’s gonna lash out at me or my company. He will stand at the gate and question people who come to the gate asking questions like who are you here to see? He is clearly out of control and needs counselling of some kind. I don’t wish to live in this type of environment, so if nothing is done about him being evicted I will have to consider giving my notice unfortunately. [Reproduced as written]

The writer of this first letter quotes some of the things that the tenant has been overheard saying, including “I’m gonna knock you the fuck out!” and “Stop looking at me, I will gauge your eyes out!” [Reproduced as written]

The second letter in evidence from another tenant and appears also to relate to the night of April 7. That writer appears to have witnessed the incident, and says that the tenant punched both of the guests involved four times each. The writer also says: “This act of violence, is totally unacceptable. I had to flee and re-locate from my son’s father, when he became too much of a problem, with his violent behavior. I will stand beside my fellow neighbours when it comes to putting a stop to this unforgettable violent behavior. There is just no room for this here. There are two young familys that live here with very young children and babies . . .”. [Reproduced as written]

A third letter from another tenant is undated. Its writer recounts having personally witnessed the tenant “physically attack 2 people,” apparently referring to the April 7

incident. The letter writer also states that he or she has “been verbally threatened by this young man” and continues on: “we live in constant fear of physical and verbal threats . . . I would like something to be done about this situation we should not have to live like this he is a hot head and cannot control himself. Please for the other tenants here take the situation seriously before someone else gets hurt.” [Reproduced as written]

The tenant and his sister say in response that the two incidents have been exaggerated and misunderstood. The tenant testified that he did not assault anyone on February 10. He says that on that night his neighbours began to play loud music. The tenant turned up his music to drown out the neighbour’s music, and the neighbours then banged on his wall. The tenant knocked on the door of the neighbour’s unit, and the door opened, and he asked about the banging. Another tenant, A, reported this to police, but she only heard what was happening and was not present.

The tenant further testified that one of his sister’s neighbours, T, has guests who regularly throw rocks at his window to get his attention, that this is disruptive, and that the landlord has not addressed this in spite of his sister’s complaints. The tenant said that on April 7 he went to investigate who was throwing rocks and that the rock-thrower responded aggressively and the tenant pushed him down but did not punch him. That person fell down, and then another person came outside and threatened the tenant with a hammer, which is why he left the scene.

The tenant says he monitors the entrance to the building and questions people who are entering because he is concerned with the safety of the building and that his sister and her child live there as well. He says has never harmed any other tenant or their guest. He admits he has yelled on occasion but only when he has been triggered by the conduct of others. He says he is attending anger management counselling, and that he has apologized to A, whom he believes wrote one of the letters in evidence. He says A was the person who reported the February 10 incident but that she misunderstood it as she was not there and only overheard it.

The tenant and his advocate argue that there have been only two incidents, that they have not involved tenants or occupants, and that those have occurred over the last four months while the tenancy has been in place for two years.

Analysis

Section 47(1) of the Act allows a landlord to end a tenancy for various categories of “cause.” Unless the tenant agrees that the tenancy will end, the tenant must dispute a

notice under this section by filing an application within 10 days of receipt. As the tenant in this case has done so, the burden of proof is on the landlord on a balance of probabilities to establish the cause(s) alleged.

Although the tenant denies having assaulted anyone on April 7, two of the three tenants who wrote letters of concern appear to have witnessed the April 7 incident, and their descriptions, along with JG's testimony of the "aftermath" of the incident, are all more consistent with an assault than the tenant's version. On a balance of probabilities it is more likely than not that the tenant assaulted these two people.

Regardless of whether or not the tenant's conduct is an illegal activity, it is clear that witnessing the assault and/or its "aftermath" affected the quiet enjoyment of at least three other tenants. I find that this was also a substantial disruption to those other tenants.

Based on this, and on the letters from the tenants about prior conduct by the tenant, I find that the tenant has significantly disturbed and unreasonably disrupted other occupants. A threat is a serious matter even when it is not accompanied by physical violence. I find that at least one other renter has been threatened by the tenant. I also find that at least three other renters have overheard threatening language from the tenant. All of them have been made significantly uncomfortable as a result.

The landlord's allegation that the tenant has breached a term of the addendum to the tenancy agreement is not material. The landlord has not alleged on the 1 Month Notice that there is cause under s. 47(1)(h), and this subsection requires that the landlord first give the tenant written notice of a breach of material term, and reasonable time to address the breach, which the landlord has not done in this case.

The landlord has established on a balance of probabilities that there is cause to end the tenancy. Accordingly, I uphold the landlord's 1 Month Notice. This tenancy ended on May 31, 2017, the corrected effective date of the 1 Month Notice. I therefore grant the landlord a two (2) day order of possession.

The Act does not provide for compensation for the losses claimed for the tenant for having to take time off of work.

Conclusion

The 1 Month Notice is upheld. The landlord is granted a two (2) day order of possession. The tenant may be served with this order on a date chosen by the

landlord. Should the tenant or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The Act does not provide for compensation for the losses claimed for the tenant for having to take time off of work.

The tenant is clearly taking steps to address the issues that have caused the concerns here, and the tenant has the support of his sister in doing so. Although this tenancy must end, the tenant's efforts will very likely mean that he will have other opportunities for successful tenancies in the future.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 29, 2017

Residential Tenancy Branch