



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMPBELL RIVER HEAD INJURY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 28, 2017 (the "Application"). The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause, dated April 19, 2017 (the "One Month Notice"), pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by J.K. and S.H., agents, who were capably assisted by B.W., legal counsel. All parties giving testimony provided a solemn affirmation.

The Tenant confirmed that the Application package was served on the Landlord. Although unable to provide details with respect to service, J.K. confirmed it was received on May 1, 2017. The Tenant also submitted further documentary evidence. Again, J.K., confirmed it was received on May 17, 2017. I find that the Tenant's Application package and subsequent documentary evidence were received by the Landlord on May 1 and 17, 2017, respectively.

The Landlord submitted documentary and digital evidence in response to the Tenant's Application. According to J.K., the evidence was posted to the door of the Tenant's rental unit on May 9, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the Landlord's documentary and digital evidence on May 12, 2017.

No further issues were raised with respect to service and receipt of the above documents and evidence. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issue to be Determined

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

On behalf of the Landlord, J.K. provided evidence in support of the One Month Notice. She testified that issues between the parties were resolved during a hearing that took place on March 31, 2017. During the hearing, the parties agreed to settle their dispute, which settlement was documented in a decision bearing the same date. The terms of the settlement agreement were as follows:

Over the course of the hearing, the parties reached an agreement to settle this matter on the terms set out below. Accordingly, I have made no findings of fact with respect to the allegations relied upon by the landlord in the 1 Month Notice.

- 1. The landlord withdraws the 1 Month Notice.*
- 2. The tenant withdraws his application to dispute the landlord's 1 Month Notice.*
- 3. The tenancy will continue on the following conditions:*
 - (a) The tenant agrees to always escort his visitor, the Guest, in and out of the building and on and off the property surrounding the building, including the parking lot.*
 - (b) The tenant agrees to provide the landlord with a letter no later than Monday, April 3, 2017 that confirms that the Guest does not have keys to the building or to the tenant's rental unit.*

(c) If the tenant breaches either (a) or (b) above, the landlord can rely on this agreement and evidence establishing the breach to bring an application to end the tenancy.

[Reproduced as written.]

According to J.K., the Tenant breached term 3(a) of the settlement agreement within 15 minutes of the end of the hearing, and continued to do so in the days that followed. Numerous instances of the Tenant's guest entering and leaving the rental property unescorted were referred to by J.K. and were contained in the Landlord's digital evidence. As a result of the breaches of the agreement, S.H. sent a letter to the Tenant, dated April 7, 2017, which stated:

Please be advised that you are already in violation of the agreement made between yourself and the [Landlord] on March 31st, 2017. Said agreement was created between both parties and set out by the Residential Tenancy Board. You are in breach of both conditions A and B, as detailed in the copy of the letter provided by the Residential Tenancy Board that is included with this letter.

Please be advised that if you continue to violate these terms that you will be issued an eviction notice. According to J.K., the Tenant has continued to breach the terms of the agreement.

[Reproduced as written.]

The Landlord's agent, J.K. provided information about the concerns raised by the Tenant's unescorted guest. She advised that the Landlord has received complaints about the Tenant's guest urinating behind the building, which was witnessed by other tenants. In addition, the Landlord has received complaints from a tenant and her service provider with respect to feeling intimidated and unsafe with the Tenant's guest in the rental property. The service provider subsequently refused to attend at the rental property.

In addition, J.K. testified the Tenant has never provided the Landlord with the letter described in 3(b) of the settlement agreement.

In reply, the Tenant testified that he does not dispute the video evidence but disputes harassment by the Landlord. He questioned the credentials of S.H., and indicated that the rental unit is not a prison. The Tenant submitted that the terms of the settlement

agreement are “over the top” and are contrary to his human rights. The Tenant also suggested the restrictions placed on him are racially motivated because his friend is “native”.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause by issuing a notice to end tenancy. In this case, the Landlord issued the One Month Notice on the basis that the Tenant or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and has put the Landlord’s property at significant risk.

The undisputed evidence before me confirms that the Tenant’s guest has continued to enter and leave the rental property unescorted, contrary to the settlement agreement between the parties. Further, I find that the Tenant’s guest has been witnessed urinating on the rental property by other tenants, that the Tenant’s guest has intimidated at least one other tenant and her service provider, resulting in a loss of service for that tenant. Finally, the Tenant did not provide the Landlord with a letter confirming the Tenant’s guest does not have a key to the rental property, as set out in 3(b) of the agreement.

The Tenant’s did not dispute the testimony provided on behalf of the Landlord. Rather, his testimony and submissions raised issues such as harassment, racism, human rights, his health, and the competence of one of the Landlord’s agents. However, I find there is insufficient evidence before me to conclude the One Month Notice should be cancelled. Accordingly, the Tenant’s Application is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord. A copy of the One Month Notice was submitted with the parties' documentary evidence. I find the One Month Notice complies with section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's Application is dismissed. By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in 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: June 2, 2017

Residential Tenancy Branch