



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC CNC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. The parties acknowledged service of the respective applications for dispute resolution including all evidence before me.

Issues

Should the 1 Month Notice be cancelled? If no, is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover its filing fee?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy began on January 1, 2011. The rental unit is a 1 bedroom apartment on the 5th floor of a 61 unit apartment building.

On April 26, 2017 the 1 Month Notice was served to the tenant by posting a copy to the door of the rental premises. The tenant filed an application to dispute the Notice within the applicable time period under the Act.

The landlord issued the 1 Month Notice on the grounds that the tenant significantly interfered with or unreasonable disturbed another occupant or the landlord; seriously jeopardized the health or safety of another occupant or the landlord; and engaged in illegal activity which adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

On behalf the landlord, the building manager T.T. testified that on the early morning of March 18, 2017, he was awoken on numerous occasions by loud noises which he discovered were coming from the laundry room where the tenant was doing laundry from approximately midnight to 5:00 a.m. Both he and the witness D.D. went to investigate the cause of the noise on more than one occasion. Finally, he advised the tenant that he had had enough and was closing the laundry. As he left the laundry room, the tenant punched him twice in the right arm and kicked him in the thigh. D.D. was standing outside the laundry room and witnessed the assault. The police were called but he did not press charges. As a result of this incident, he has not been sleeping well and can no longer perform his job duties properly.

The landlord's witness and other building manager D.D. testified that he also feels very uncomfortable in performing his job in the building. He testified that he witnessed the tenant kicking T.T. and was very shocked by the incident.

The tenant testified that she has been a long term tenant with no previous history and gets along with other tenants in the building. On the night of the incident she was preparing for ski-trip so she had a lot of laundry to do. She finished doing her laundry at 5:00 a.m. When she was finishing up, she noticed the building manager T.T. standing at the door. She testified that T.T. said hello and then in a gentle tone said there have been complaints. T.T. then started to get upset and aggressive as he noticed some torn up signs and unplugged machine in the laundry room. She testified that T.T. then told her she could no longer be in the laundry room and threatened to call the police. She was shocked at the threat of police being called and started to cry and have a panic attack. She felt threatened as T.T. was standing in the door way so she kicked at him. The kick was higher than she meant and she acknowledges that she should have just asked him to move.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

The facts of this case were essentially not in dispute. On the early morning of March 18, 2017, the building managers were performing their job duties by investigating various disturbances caused by the tenant throughout the night while she was doing laundry. During their investigation, a confrontation ensued during which the tenant kicked the building manager. The tenant did not dispute kicking the building manager although she disputes punching and kicking him. I do not accept the tenant's argument that she felt threatened by the building manager which is why she panicked and kicked him. I find the building manager was only doing his job in asking her to leave the laundry room at 5:00 a.m. after numerous noise disturbances. Threatening to call the police is no reason for the tenant to feel threatened in such a way that would justify her actions in kicking the building manager.

By kicking the building manager, I find the tenant has significantly interfered with the ability of the building managers to perform their job duties; has seriously jeopardized the health or safety of another occupant or the landlord; and adversely affected the safety or physical well-being of another occupant.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the 1 Month Notice. The tenant's application to cancel the 1 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the security deposit.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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: June 14, 2017

Residential Tenancy Branch