



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenants' 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; and
- recovery of the filing fees of this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant JL (the "tenant") confirmed he represented both co-tenants.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenants' application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice and the landlord was duly served with the tenants' application for dispute resolution package.

Preliminary Issue – Adjournment Request

At the conclusion of the hearing, after all parties have had an opportunity to present their evidence, the tenant made an application for an adjournment of the proceedings in order to provide further evidence. He testified that he believes that there is additional information and documentation that is relevant to the circumstances of the landlord's issuing the 1 Month Notice. The tenant said that he needs to make an FOI request for the relevant documentation. He said that he has not made an FOI request as he believes there are a significant number of documents that he must parse through to find the relevant materials. The tenant said that he would also be able to produce witnesses

and be better prepared for the hearing. The landlord opposed the application for adjournment stating that the matter has been outstanding for over one month and that he requires an end of tenancy to prevent further jeopardy to the health and safety of the other occupants and landlord.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The tenant testified mainly that he required time to submit more material. The tenant testified that he believes that he is being targeted by the landlord and other tenants because of opinions he provided regarding the structural integrity of parts of the rental building. The tenant said that he has not yet made an FOI request but believes that pertinent documentary evidence exists. The tenant said that he has been provided with a quote from the FOI office about the cost of accessing certain records but has not taken any additional steps. The tenant also testified that he has filed several complaints against the landlord with the police but has not made a request for those records, and does not know how he would go about accessing them. The tenant stated that he has been unable to follow up and gather written evidence as he suffers from health issues.

I find that this is all evidence he could have sought in the month since he applied for dispute resolution. Even if the documents were not made available by the FOI office in time for the hearing the tenant had ample opportunity to take the necessary steps to request his evidence or take reasonable steps to prepare. The tenant testified that as of the date of the hearing he has not ordered the documents he believes necessary.

Furthermore, I note that the tenant made his application for an adjournment at the conclusion of the hearing after he has had an opportunity to hear the landlord's evidence. I find that an adjournment would be unfairly prejudicial to the landlord who prepared his evidence in accordance with the scheduled hearing date.

Under these circumstances, I find that the tenant's request for an adjournment arises solely from his intentional neglect. The tenant has not taken reasonable steps to collect

his evidence during the six weeks from the date of filing the application for dispute resolution to the hearing date. At the hearing, I found that the tenant had not met the criteria established for granting an adjournment.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy began in January, 2015. The current monthly rent is \$650.00 payable on the first of each month. The rental unit is a single unit in a multi-unit apartment complex.

The landlord testified that the tenant's behaviour has been rude, aggressive and confrontational. The landlord said that the tenant has uttered threatening remarks to him on certain occasions. The landlord mentioned one occasion on April 28, 2017 prior to issuing the 1 Month Notice where he said the tenant called him "a dead man". The landlord testified that he has made one complaint to the police about the tenant's behaviour and is aware of two other reports made by tenants of the rental building. The landlord provided RCMP incident file numbers as evidence of the complaints made.

The landlord's witness CK is a live-in caretaker of the rental building. He testified that the tenant has spoken aggressively about the landlord and mentioned one incident where the tenant said he would "get him". The witness testified that on one occasion in March, the tenant angrily tore out the extension cord of a vacuum he was using in the hallway, spun it around like a lariat and hurled it towards his head. The plug missed his head and struck against the wall with enough impact that the prongs were dislodged. The witness said that the tenant then spat at him and made threatening remarks. The witness said that the tenant later cut many of the extension cords being used in the rental building. He said that the tenant continues to make threatening, derogatory remarks towards him. He testified that he has filed police complaints against the tenant, both on his own and in his capacity as building caretaker.

In addition the witness said that the tenant throws a ball against the walls of the lobby causing damage. He also disturbs the tiling on the ceilings of the common areas.

The landlord's witness AD, is another tenant in the rental building. She testified that the tenant has on various occasions defaced decorations on her door, has uttered threatening remarks aimed at her and has carried himself in an aggressive and threatening manner.

The landlord's witness GK, is a tenant in the rental building. She testified that she witnessed the tenant make threatening remarks towards the caretaker CK. She testified that the tenant makes loud noises in the common hallways and she is aware of an incident where the tenant engaged in a violent altercation with someone collecting empty bottles from the building bins.

The landlord's witness DD, is a tenant in the rental building. She testified that she heard loud voices, yelling and screaming from the hallway. She went into the hallway to investigate and she witnessed the tenant rip an electric cord from the wall and whip it at the caretaker, CK. She recalled that it barely missed hitting CK in the face. She said that she later found one of the electric prongs which was dislodged when it hit the wall. She testified that the tenant then made threatening remarks at CK. She said that she later witnessed the tenant cutting several of the cords that were in the hallway of the rental building. She said that she is aware of the tenant's aggressive demeanor and has witnessed him willfully damaging common property.

The tenant denies that he has acted in an aggressive manner. He testified that he mostly keeps to himself and does not interact with the other tenants. He denies that he ever purposefully damaged another tenant's door decoration. He testified that he is often accompanied by his dog and it is possible the dog may have rubbed up against the door to cause incidental damage.

He testified that he was walking his dog when he tripped over the extension cord, pulling it from the wall socket. He said that he was tangled up in the cord while attempting to control his dog. He testified that he did not aggressively hurl the cord at others. He denies cutting cords in the rental building hallways.

The tenant testified that it is the landlord who has been aggressive in his interactions with him. The tenant said that when he told the landlord he was a dead man, he was referring to the landlord's unhealthy complexion at that time. He said that it was an utterance of concern and sympathy and not a threat as the landlord interpreted it. The tenant testified that he has made several complaints to the police about the landlord's behaviour. The tenant was unaware of the police incident numbers or the number of complaints he has made throughout the tenancy.

The tenant testified that he believes the landlord and the other tenants are angry with him because he provided his opinion regarding necessary repairs and renovations to some of the units in the rental building. The tenant said that he pointed out structural problems that required repairs which would necessitate major construction work. He said that the landlord is mad because of the cost of construction and the tenants are upset that they may be displaced from their rental units. The tenant said that he believes this is a campaign targeting him.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

Considered in its totality, I find the evidence presented by the landlord and his witnesses to credibly show that the tenant has jeopardized the health and safety of the occupants of the rental building. I accept the evidence of the landlord that the tenant hurled an extension cord at the caretaker with the intention of causing physical harm. I accept the landlord's evidence that the tenant cut some of the extension cords in the common area, which I find jeopardized the health and safety of the residents of the building. Cutting electrical cords which may have live currents is an act that I find to be inherently dangerous and poses a serious risk of damage to the property and its occupants.

I found the evidence given by the landlord and his four witnesses to be consistent, forthright and compelling. Each of the witnesses gave evidence about the tenant's demeanor and conduct prior to the incident and afterwards. I found their recollection of events to be consistent and reasonable.

The tenant provided alternate interpretations of his actions but I do not find the tenant's version of events to have an air of reality. I found the tenant's testimony to be less than

credible in many instances. The tenant, AD testified that her door decorations were vandalized by the tenant drawing and defacing them. The tenant said that he believes the décor may have been damaged by his dog rubbing up against the door. I do not find it reasonable that damage caused by a dog could be misinterpreted as drawing on the decorations. The tenant testified that the landlord misinterpreted the intention of the words describing him as a “dead man”. I do not find it reasonable that a show of concern and sympathy could be misinterpreted as a threat. I find it more reasonable that the tenant uttered a threat which he is now characterizing differently. The tenant testified that he did not hurl the extension cord at the caretaker but was caught up in them and lost his balance. I do not find the tenant’s version of events to be reasonable or consistent with the statements provided by two of the landlord’s witnesses. I do not find the tenant’s assertion that he is the victim of a concentrated effort by the witnesses and landlord to be particularly credible. Where there is a discrepancy in the testimonies, I prefer the version presented by the landlord and his witnesses as I find it is consistent, reasonable.

I find that the landlord has sufficiently shown on a balance of probabilities that the tenant has engaged in actions that have seriously jeopardized the health or safety of the other occupants of the building by whipping an extension cord at the caretaker’s face and cutting electrical cords in the rental building hallways.

Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants’ application.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord’s 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, the tenant has seriously jeopardized the health or safety or lawful

right of another occupant or landlord, or has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant 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 tenants' application is dismissed without leave to reapply.

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 26, 2017

Residential Tenancy Branch