



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47.

The owner of the residential premises, the property manager for the owner and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The property manager (the landlord) stated that they would be the primary speaker during the hearing.

While I have turned my mind to all the documentary evidence, including witness letters and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they personally served the landlords with the Tenant's Application for Dispute Resolution (the Application) and evidentiary package on October 05, 2017. The landlord confirmed that they received the Application on this date. In accordance with sections 88 and 89 of the *Act*, I find the landlords were duly served with the Application and evidentiary package on October 05, 2017.

The landlord submitted that they posted their evidence to the door of the rental unit on November 17, 2017. The tenant confirmed receipt of the landlord's evidence and that he had a chance to review it. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

Rule 3.15 of the Residential Tenancy Branch's Rules of Procedure (the *Rules*) establishes that all documentary evidence to be relied on at the hearing must be

received by the applicant and the Residential Tenancy Branch (RTB) not less than seven days before the hearing.

Rule 3.17 of the *Rules* states that evidence not provided to the other party in accordance to the *Rules* may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available prior to when they submitted their evidence. Rule 3.17 further states that the arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice and that both parties must have the opportunity to be heard on the question of late evidence.

I find that the tenant admitted that they had an opportunity to review the landlords' evidence. For this reason I find that the tenant would not be prejudiced in consideration of the landlords' evidence and I will consider it.

The tenant confirmed that they received the One Month Notice, which was personally served to them on September 22, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

Issue(s) to be Decided

Should the landlords' One Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Background and Evidence

The landlord provided written evidence that this tenancy commenced on April 28, 2017, with a monthly rent of \$600.00, due on the first day of each month. The landlord confirmed, as per the tenancy agreement, that they currently retain a security and pet deposit totaling in the amount of \$450.00.

A copy of the signed landlords' September 22, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by October 31, 2017, the landlords cited the following reasons for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *put the landlord's property at significant risk.*

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;*
- *jeopardize a lawful right or interest of another occupant or the landlord*

The landlords also submitted into evidence:

- an undated written statement from the landlord concerning events that occurred from August 21, 2017 until September 21, 2017, the date the altercation occurred;
- a copy of a caution notice to an occupant (Occupant A) concerning a prior incident that led up to the altercation with the tenant;
- three copies of incident reports from other occupants of the residential premises, two dated September 21, 2017, and another dated September 22, 2017, describing the events that occurred on September 21, 2017, between the tenant and Occupant A;
- a copy of a letter from a Ministry of the government of British Columbia dated September 21, 2017, advising Occupant A that charges have been filed against the tenant and advising Occupant A that the tenant is to not have any direct or indirect contact with them;
- a copy of a 'Promise to Appear' for the tenant to attend court to address their charge of 'Assault with a weapon'.

The tenant submitted the following evidence:

- a copy of a letter from the tenant to the landlord dated August 27, 2017, concerning Occupant A throwing an unripen tomato at the tenant's head;

- a written statement from the tenant to the landlord dated September 23, 2017, regarding the altercation with Occupant A on September 21, 2017;
- three copies of character reference letters from other occupants in the residential premises indicating their support for the tenant and describing the altercation on September 21, 2017, including the events that led up to it;
- a copy of an undated written statement from the tenant to the Residential Tenancy Branch(RTB) concerning the altercation with Occupant A;

The landlord testified that the tenant hit another occupant of the residential premises in the head with a baseball bat and was charged by the police for the incident. The landlord further testified that when she found Occupant A, he was covered in blood, which was pooling in his groin from excessive blood loss. The landlord stated that Occupant A had bruising all over his body. The landlord submitted that other occupants are afraid to have the tenant on the residential premises. The landlord questioned why the tenant would have a baseball bat to protect themselves.

The tenant stated that Occupant A threw an unripen tomato at his head. The tenant further stated that Occupant A came to the tenant's door at around 2:00 a.m. on a couple of occasions, trying to get the tenant to come out of their rental unit to fight. The tenant testified that he submitted a complaint to the landlords and called the police but that no action was taken on by the landlord to address the tenant's concerns with Occupant A.

The tenant submitted that on September 21, 2017, Occupant A was drunk, came to the tenant's door and was knocking on it to get the tenant to come out and fight. The tenant stated that he tried to push Occupant A out of the way to spit on the ground, which Occupant A mistook for aggression and proceeded to punch and attack the tenant in the tenant's rental unit. The tenant further stated that Occupant A would not leave the rental unit and the tenant could not find their phone to call the police so they grabbed a bat and jabbed at Occupant A with the bat until Occupant A left the rental unit.

The tenant testified that they walked out of the rental unit and Occupant A came running at him, tripped at the tenant's feet and tried to pull the tenant down to the ground, at which time the tenant hit Occupant A in the head with a bat once. The tenant further testified that he asked another occupant to call the police at that time. The tenant addressed the written statement that the landlord provided in their evidence which indicated that his rental unit was not trashed despite the altercation that took place within it and that the tenant had no bruising in the face from Occupant A punching him. The tenant stated that he had time to clean up his rental unit before being arrested by

the police and that the tenant's beard covered up the bruise on the tenant's face, which is supported by one of the character reference letters provided in evidence.

The landlord testified that she did address the tenant's complaint as shown in the caution notice, provided in the landlord's evidence, to Occupant A. The landlord further testified that Occupant A has been given a One Month Notice as well and has already moved out of their rental unit at the residential premises. The landlord stated that Occupant A required 20 staples in their head, 10 on each side, running parallel to each other. The landlord maintained that she did not see any marks on the tenant, no blood in the apartment and no evidence of an altercation in the tenant's apartment. The landlord testified that the tenant was yelling at Occupant A to "come get some more".

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 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 the grounds for the One Month Notice. I find that the tenant disputed the One Month Notice on October 02, 2017. As I have found that the One Month Notice was personally served to the tenant on September 22, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find the landlords bear the burden of demonstrating, on a balance of probabilities, 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, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and engaged in illegal activity which has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant

I find that it is undisputed, based on the evidence and the testimony from the landlord and the tenant, that the tenant assaulted Occupant A with a baseball bat which caused serious injuries to Occupant A and resulted in the arrest of the tenant due to this illegal activity. I find that, despite Occupant A coming to the tenant's door looking for a fight, the tenant had the choice to not open the door and ignore Occupant A until they went away, or to call the police, or to call the landlord.

I find the tenant chose to open the door of their rental unit and confront Occupant A which resulted in the events unfolding as they did and in the arrest of the tenant for assault, even if that was not what the tenant intended to happen when they initially opened the door. I find that, based on the tenant's testimony, that the tenant made first contact with Occupant A by pushing them out of the way to spit and this led to Occupant A retaliating.

I accept the landlord's testimony that Occupant A had serious head injuries and bruising on their body from the tenant's assault on Occupant A.

I find the landlord has proven that they took action on the tenant's behalf in the form of the caution notice served to Occupant A when the landlord was notified of Occupant A's behaviour. I find that it is not reasonable to conclude that the landlord would have ignored further complaints regarding Occupant A coming to the tenant's door looking for a fight if they had been notified of it at that time or the next morning.

I have reviewed all documentary evidence and I find that, based on the landlord and the tenant's written evidence and testimony, as well as the balance of probabilities, the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety of another occupant and has engaged in illegal activity which has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

I find the landlords had sufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the tenant's Application to set aside the One Month Notice is dismissed.

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

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's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the One Month Notice complies with section 52 of the *Act*. As I have dismissed the tenant's Application, I grant a two day Order of Possession to the landlords in accordance with section 55(1) of the *Act*.

Conclusion

I dismiss the tenant's Application to cancel the landlords' One Month Notice.

I grant an Order of Possession to the landlords **effective two days after service of this Order** on the tenant. 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.

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: November 30, 2017

Residential Tenancy Branch