



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC MNDC MNSD FF

Introduction:

Both parties attended the hearing, the tenant by his agent as he is in the hospital, and gave sworn testimony. The parties confirmed the tenant received personally the One Month Notice to end Tenancy for cause dated to be September 2, 2017 to be effective September 30, 2017 and the Application for Dispute Resolution. The landlord acknowledged receipt of the tenant's application also. I find that the parties were legally served with the documents according to sections 88 and 89 of the Act. The effective date on the Notice is automatically corrected to October 31, 2017 pursuant to section 53 of the *Residential Tenancy Act* (the Act) as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause;
- b) A Monetary Order for unpaid rent pursuant to sections 46 and 67

The tenant applies pursuant to the Act for orders as follows:

- c) To cancel a Notice to End Tenancy for cause;
- d) To return his personal property;
- e) To suspend or set conditions on the landlord's right to enter the rental unit;
and
- f) To authorize the tenant to change locks on the rental unit.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Have they proved there are rent arrears and they are entitled to a monetary order?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that the landlord took his personal property and has entered his unit contrary to the Act? If so, is he entitled to an Order to change the locks?

Background and Evidence:

Both parties, the tenant by agent, and counsel for the landlord attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord gave an account of the facts. The female landlord offered to supply an adjoining cottage to her mother in June 2016. The mother brought her partner with her and there was some controversy between him and the rest of the family. Nevertheless he was appreciated by her mother as evidenced by her will in evidence. Her mother died in June 2017 and the landlords say they have had great difficulty in coping with this partner whom they did not regard as a tenant but who lived there and paid some rent. While the mother lived there, \$800 a month was paid by the mother. There was no security deposit.

The landlords state they feel unsafe with the tenant living beside them as he is being physically and verbally abusive to the female landlord. An incident on August 5, 2017, the tenant was brought to the property by the Police. The Police Constable spoke to the landlords and as he walked away, the tenant approached the female landlord in a threatening way and stood within inches of her face while shouting accusations at her. He had clenched fists so the male landlord approached and stepped between them. The tenant walked away. Next day, the male landlord took the tenant to the RCMP detachment to retrieve his car which had been impounded. The landlord saw him speaking to the police officer in an unusual and rude manner. The tenant was then taken into custody and moved to the hospital.

He was released and came back to the property on September 5, 2017. The tenants were recounting episodes after that when the tenant's representative pointed out that these were subsequent to the Notice to End Tenancy so not a cause for it. We agreed to disregard the subsequent episodes.

The landlords submit that the tenant has been repeatedly verbally abusive towards both landlords since June 2017 until the present. They also had significant issues with his parking of his vehicle. There is a carport for use of the cottage and lots of room for the tenant to park and leave room for the landlords to access their gate to their property. The landlords say they have repeatedly requested the tenant to not impede their access

but he has consistently refused. Episodes after September 2, 2017 are not quoted or considered.

Another problem named by the landlord was the tenant's smoking behaviour. When they asked him not to smoke, he purposely blew smoke in the male landlord's face. The smoke significantly interferes with their enjoyment of their property and impairs their health. As a solution, the landlord suggested the tenant smoke in his car. He began to do this at all hours of the day and night with his window rolled down and his radio turned up so high that it significantly interfered with the landlords' sleep as they could hear it in their bedroom next door.

The landlord served a Notice to End Tenancy for the following causes as set out in section 47 of the Act:

1. The tenant or a person permitted on the property by him
 - (i) Has significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - (ii) Has seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
 - (iii) Has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant.

The tenant's agent queried the landlord why he had not obtained police reports. The landlord said there are many reports under the tenant's name but he did not think he had time to obtain them through an Access to Information Request. The landlord pointed out the tenant's behaviour has escalated since the Notice was served and he has returned from hospital. He believes the tenant needs to take medications and forgets and his behaviour changes. He said the tenant has even been calling him from hospital and ordering him to do things.

The tenant's agent said the tenant may just be having adjustments to his medications. He pointed out that we should not be discriminating against persons with mental illness. He said that while the tenant was in hospital, the landlord entered the cottage and removed his furniture. The landlord said there was a cleaning agreement and they entered in the course of that agreement. They found the living room couch and two arm chairs were infested with fleas. There were a number of dogs on the property that belonged to the landlord's mother. The landlord agreed he threw out the couch and two armchairs but said he was prepared to make good on that to the tenant. He said they were over 20 years old. He left the tenant's bedroom intact.

The landlord said, if granted an Order of Possession, they are willing to move and store the tenant's furniture at their expense for one month to allow the tenant to return from hospital and handle his affairs. They will also buy a good used couch and two armchairs and deliver them to his new residence. The landlord said he would also waive the unpaid rent claim and filing fee.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Order of Possession

I find section 47 of the Act sets out causes, any one of which, if proven, is sufficient to end the tenancy for cause. I find the landlords served the Notice to End Tenancy alleging the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health, safety or lawful right of another occupant or the landlord and has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant.

I find the landlord's evidence credible. His credibility is supported by his information of dates and times of specific incidences and named the Police Constables involved. I find the tenant has significantly interfered with and unreasonably disturbed the landlords who live in the adjoining property by his aggressive behaviour, his smoking and deliberately playing loud music to disturb their sleep. I find the landlord's explanation for the tenant's behaviour that he is having problems with his medication very probable. This explanation is supported by the mother's will in evidence wherein she states "G MUST continue his medication to keep my babys all of them"[her emphasis]. Her babies were her dogs and she goes on to say if G. doesn't, a certain society is to be phoned about them.

I find sufficient cause to end this tenancy. The tenancy is ended on October 31, 2017 (as corrected) and an Order of Possession issued effective November 30, 2017 as agreed by the landlord.

The tenant's agent did an admirable job of representing him. He reminded us that we must not discriminate against those with mental illness. As I pointed out to him, my position as arbitrator involves finding out if persons' behaviour violates the Act and making a decision as to the consequences according to the Act. This applies to both landlords and tenants. In this case, the weight of the evidence is that the tenant's

behaviour is significantly affecting the landlord's peaceful enjoyment and health in many ways so his tenancy has to be ended in accordance with section 47.

Regarding the landlord's behaviour in entering the tenant's home and removing his furniture, I find the landlord violated the Act and infringed on the tenant's privacy. The landlord has offered to make the tenant whole for any loss incurred by his action so I will make an Order accordingly. I note the landlord also has waived his monetary claim for \$800 for unpaid rent and offered to move and store the tenant's remaining furniture at his expense for a month as the tenant is in hospital.

Conclusion:

I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the landlord is entitled to an Order of Possession effective November 30, 2017. No monetary order will be issued as the landlord waived his claims and filing fee. I find the tenant entitled to orders as follows:

I HEREBY ORDER the landlord to move and store the tenant's remaining goods for a month starting November 30, 2017 at his expense. I note exceptions of the appliances that belong to the cottage, a cabinet belonging to the female landlord and a bookcase belonging to her brother which her mother had always denoted as theirs.

I HEREBY ORDER the landlord to buy a used couch and two armchairs in good condition to replace those he removed. I ORDER that he deliver these at his expense to the tenant's new residence.

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 15, 2017

Residential Tenancy Branch