



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the *Act*").

The landlords' agents, the landlords' caretaker for the building, the tenant and the tenant's assistant 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. Landlord Agent K.B. (the landlord) stated that they would be the primary speaker on behalf of the landlord and the tenant's assistant M.B. stated that she would be the primary speaker on behalf of the tenant.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant's assistant M.B. (the assistant) testified that the Application for Dispute Resolution (the Application) was left with an agent of the landlord on October 04, 2017. The landlord confirmed that they received the Application. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The landlord testified that they served the tenant with their evidence by posting it on the door of the rental unit on December 01, 2017. The assistant confirmed that the tenant received this evidence. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The assistant confirmed that the tenant received the One Month Notice which was posted to the door of the rental unit on September 18, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

The assistant confirmed that the tenant did not submit any evidence.

Issue(s) to be Decided

Should the landlords' One Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord provided written evidence that this tenancy commenced at some point before November 2015.

A copy of the signed September 18, 2017, One Month Notice was entered into evidence by the landlord. In the One Month Notice, requiring the tenant to end this tenancy by October 31, 2017, the landlord 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*

The landlord also provided into evidence:

- a copy of letter dated November 06, 2015, from the landlord to the tenant warning of a noise complaint about the tenant's unit and that further warning notices will result in a 30 day eviction;
- a copy of letter dated August 31, 2017, from the landlord to the tenant regarding a second warning of a noise complaint about the tenant's unit and that a further warning notice will result in a 30 day eviction; and
- a copy of letter dated September 18, 2017, from the landlord to the tenant warning of a third noise complaint and a disturbance caused by the tenant which

resulted in a One Month Notice being issued to the tenant for noise complaints, disruption of fellow tenants, verbal threats of physical violence towards other tenants, allowing past evicted tenants to stay with them, uttering profanities in the common areas and verbal abuse of other tenants as well as the caretaker;

- a copy of a letter from a registered psychologist dated September 29, 2017, with the tenant's diagnoses; and
- a copy of a 'details of the complaints' prepared by a third party in the tenant's favour outlining the tenant's position regarding past complaints and the tenant's position in how tenancy matters should be handled in the future.

In addition to these documents the landlord provided four anonymous e-mails.

The landlord testified that there have been numerous anonymous complaints from other occupants in the building against the tenant. The landlord submitted that these complaints have been followed up with written warnings to the tenant. The landlord stated that the One Month Notice was issued after the third complaint. The caretaker stated that the complaints from other occupants were anonymized due to fear of retribution against them from the tenant and to protect the occupants' privacy.

The caretaker stated that the police were at the building twice during the incidents which occurred on September 15, 2017, that led to the One Month Notice being issued to the tenant. The caretaker stated that the tenant's relative who was previously evicted from the building was back on the property that day and was arrested by the police. The caretaker stated that the tenant has threatened the caretaker as well as threatening to kill other occupants. The caretaker stated that one of the noise complaints that occurred during the day in August 2017 was due to a fight between the tenant and her uncle.

The assistant testified that other occupants in the building have issues with the tenant's race and the anonymous complaints are not kind. The assistant further testified that the noise complaints were for events that occurred during the day due to a dog in the rental unit biting the tenant in the face. The assistant stated that the tenant fell and banged her head, yelling and screaming in pain. The assistant stated that the tenant was yelling at the owner of the dog to come and get it. The assistant testified that the police attended the rental unit and took the tenant out of the shower and pulled a towel off of her. The assistant recounted that the police arrested the tenant's uncle at that time of the first incident.

The assistant stated that the incident that occurred in November 2015 was due to another occupant in a neighbouring unit who has mental health issues. The tenant testified that this neighbouring occupant has yelled at the tenant in a threatening manner and that the tenant is simply yelling back at the neighbouring occupant in response.

The assistant stated that the second incident in August 2017 was due to the tenant's uncle and she does not understand why the tenant got a warning letter for her uncle's behaviour. The assistant stated that the tenant was given permission by the landlord for her uncle to come to the rental unit.

The tenant testified that she was sitting down to eat supper with her niece and her uncle when the dog got excited and bit the tenant's nose which led to the tenant becoming angry and slamming the door a couple of times. The tenant stated that she decided to take a shower when the police arrived at the rental unit. The tenant stated that the police came to the building again at the tenant's request due to the incident with the shower in the afternoon. The tenant stated that she met the police in the courtyard because all the other occupants were unnecessarily concerned about the tenant's business and so the tenant felt that, since they were concerned about the tenant's business, she would have the confrontation with the police in the courtyard so all the other occupants would know what was going on.

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. As the tenant disputed this notice on September 27, 2017, and since I have found that the One Month Notice was served to the tenant on September 18, 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 that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice. I further find that I cannot consider the anonymous e-mails provided as evidence by the landlord as the principles of natural justice require a

respondent to know the full details of the allegations made against them in order for them to be able to adequately respond to the allegations.

I have reviewed all documentary evidence. Based on the landlords' written evidence and affirmed testimony of all parties, as well as the balance of probabilities, I find that the tenant and the tenant's guest have unreasonably disturbed the landlord and other occupants in the building where the rental unit is located.

I find that section 47 of the *Act* allows for a landlord to end a tenancy if a tenant unreasonably disturbs other occupants or the landlord. I find that the tenant has testified that they intentionally brought a private matter with the police to a public place to engage with them so that all other occupants in the building could witness what was occurring. I find that this intention of having an altercation with the police in a common area so that other occupants are forced to witness it demonstrates animosity and disrespect to the other occupants in the building and I find that this incident unreasonably disturbed the other occupants.

I find that section 47 of the *Act* allows for a landlord to end a tenancy if a person permitted on the property by the tenant unreasonably disturbs other occupants or the landlord. I find that the landlord issued a warning letter to the tenant about their and their guest's behavior and notified the tenant that they would issue a notice to evict if the behavior continued. I find that the tenant has acknowledged that her uncle was one of the reasons for the tenant being issued a warning letter in August of 2017. I find that, despite the previous warning letter to the tenant, the tenant's uncle was allowed back to the property by the tenant and resulted in the uncle's arrest and other occupants being unreasonably disturbed by this police action. I find that the tenant is responsible for the actions of her guests.

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 *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession. For these reasons, I grant a two day Order of Possession to the landlords.

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(s) 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: December 19, 2017

Residential Tenancy Branch