# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEKULI INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47 of the *Residential Tenancy Act* (the *Act*).

Both parties 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.

Preliminary Issues – Service of Documents and Consideration of Late Evidence

As the tenant confirmed that he received the landlord's 1 Month Notice placed in his mailbox on November 30, 2017, I find that the tenant was duly served with Notice in accordance with section 88 of the *Act*. Landlord DR (the landlord) confirmed that the landlord received the tenant's dispute resolution hearing package sent by the tenant by registered mail on December 12, 2017. I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

The landlord provided the landlord's written evidence including a number of letters from tenants in this rental property and other tenants in the landlord's nearby buildings to both the Residential Tenancy Branch (the RTB) and the tenant on January 11, 2018. The tenant confirmed that he received these documents posted on his door that day. I find that the landlord's written evidence was served in accordance with the RTB's Rule of Procedure 3.15 within seven days of this hearing and also in accordance with section 88 of the *Act*.

A photograph taken by Witness DW, which the landlord included in the evidence package, was of such poor quality and so unclear regarding the issue it purported to show that I have exercised the discretion provided to me in accordance with RTB Rule of Procedure 3.7 to decline to consider that photograph.

The tenant's primary written evidence was not submitted to the RTB until January 14, 2018, only five days before this hearing. The tenant testified that he posted this evidence on the door of the property identified in the landlord's 1 Month Notice as the landlord's address. The landlord testified that he never received this evidence from the tenant, noting that he has a Post Office box where mail is sent and retrieved.

In considering the tenant's written evidence, I have taken into account the RTB's Rules of Procedure regarding the provision of evidence. For example, RTB Rule of Procedure 3.13 reads in part as follows:

> *Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package…*

RTB Rule of Procedure 3.11 establishes that "Evidence must be served and submitted as soon as reasonably possible," which is clearly at question in this case.

RTB Rule of Procedure 3.14 reads in part as follows:

> *Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.*
>
> *In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17*…

RTB Rule of Procedure 3.17 allows me to consider late evidence under certain circumstances as outlined below:

***3.17 Consideration of new and relevant evidence***
*Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 and 3.15 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 at the time that their application was made or when they served and submitted their evidence.*
*The arbitrator has the discretion to determine whether to accept documentary or digital 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…*

The tenant maintained that he did not realize the true grounds for the landlord's issuance of the 1 Month Notice, and was only able to adequately provide evidence in response to the landlord's 1 Month Notice after having received and reviewed the letters included in the landlord's written evidence.

I should first note that I have considered but rejected the landlord's assertion that the tenant's written evidence posted on his door was served to him at an incorrect location, one which he seldom checks as mail is directed to his post office box. In doing so, I note that there is no written tenancy agreement for this tenancy, which would normally identify the location where the landlord could be served documents. I also observe that the landlord's own 1 Month Notice identified the address where the tenant served his written evidence.

By choosing to post the written evidence on the door of the address identified by the landlord as the location where documents could be served, the tenant opted for a method of delivery of these documents that only led to a further delay in the provision of this information to the landlord. Section 90 of the *Act* establishes that documents posted on a door are deemed served on the third day after their posting. In this case, and despite the landlord's sworn testimony that the landlord never received the tenant's written evidence, I find that the landlord is deemed to have received the tenant's written evidence on January 17,

2018, just two days before this hearing. Given the very short time frame between the tenant's receipt of the written evidence from the landlord and the date of this hearing, the tenant further contributed to the delay in providing written evidence to the landlord by posting this evidence instead of seeking him out and giving it to him directly or faxing it to him.

In considering whether to allow the tenant's late written evidence, I also have taken into account that despite the tenant's claim to the contrary, the landlord's current 1 Month Notice and a previous one issued two months earlier followed by a conversation with Landlord AA should have given the tenant a very clear indication of the behaviours that the landlord found so objectionable that the landlord was seeking to end this tenancy. Thus, I find that the tenant clearly could have but failed to obtain letters of support from those individuals who wrote letters on his behalf as part of the tenant's written evidence submitted shortly before this hearing. I find that there is no sound reason that the information contained in the tenant's written evidence was not obtained well before the tenant received the landlord's written evidence package. I find that the tenant could have obtained this information and included it either with the tenant's original dispute resolution hearing package, or certainly more than 14 days before this hearing as is usually required by RTB Rule of Procedure 3.14. If this is information upon which he intended to rely, as the Applicant, he was to have provided this information more than 14 days prior to this hearing. For these reasons, I have not allowed the tenant's written evidence. However, I did give the tenant an opportunity to speak to these issues at the hearing and to call witnesses who he had requested to participate in this hearing. He did avail himself of the opportunity to have his female friend Witness RD give sworn testimony at this hearing.

Issues(s) to be Decided

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

Background and Evidence

This tenancy began in or around May 2016 on the basis of an oral agreement between the parties. The tenant's bachelor apartment at the front of this three-unit rental building on the main floor was rented on a month-to-basis. The current monthly rent is $850.00, payable in advance on the first of each month. The parties confirmed that the tenant's rent for January 2018, has been paid by the Ministry of Social Development and Poverty Reduction, as per the arrangement that has been established for this tenancy. The landlord continues to hold a $425.00 security deposit that was paid when the tenancy began.

The landlord's 1 Month Notice identified the following reasons for ending this tenancy for cause:

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*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;…*

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

The landlord said that he was uncertain how many people were currently residing in this rental unit. At one time, the tenant's adolescent son was living there. On another occasion, the tenant's daughter was residing there. Although the landlord did not dispute the tenant's claim that neither of the tenant's children currently reside with the tenant, the landlord testified that the tenant has allowed others to live there from time to time. The landlord testified that one of these people slept on a couch on the front porch of this building for two months and later pitched a tent on the front lawn of the property. The tenant maintained that this person stayed in the tent on his front lawn for one night. The tenant testified that he is constantly trying to keep street people away from this property and to prevent them from sleeping there.

Both of the landlord's representatives at this hearing and the landlord's witness, Witness DW, who lives upstairs in the rental suite above the tenant, provided sworn testimony regarding their complaints about the tenant's actions and behaviours.

The landlord's representatives gave undisputed sworn testimony that they issued the tenant an earlier 1 Month Notice on September 30, 2017, seeking an end to this tenancy by October 31, 2017. The landlord located and read into sworn testimony the contents of that 1 Month Notice, which identified identical grounds for ending this tenancy. Landlord AA gave undisputed sworn testimony that the landlords agreed to set aside that earlier 1 Month Notice on the basis of his conversation with the tenant. Landlord AA testified that the tenant agreed to take corrective measures to address the concerns raised by other tenants in this building and in the neighbourhood regarding the tenant's behaviours and actions.

The landlord's representatives testified that the tenant's behaviours have continued and they have continued to receive complaints from other tenants in this building and from nearby neighbours, many of whom live in buildings also owned by the landlords. They cited examples of threatening behaviours including one where the tenant objected to work being performed by a contractor retained by the landlord to repair and restore the water line to this property. On October 10, an incident occurred where the tenant and his female friend, RD, became involved in what RD described at the hearing as "a fight", which required the attendance of police. Police were called by the upstairs tenants, who have provided written statements regarding this incident and others where Witness DW maintained that the tenant has threatened Witness DW. The landlord and Witness DW also described an incident where they believe that the tenant or one of his associates threw an object at the window of the upstairs tenant, breaking it. The landlord also gave undisputed sworn testimony that the tenant has changed the locks on the door of the tenant's rental unit, and installed security cameras to monitor activity.

Witness DW confirmed the information he provided in his letter entered into written evidence by the landlord. He testified regarding the excessive noise caused by the tenant at all hours of the night and the tenant's constant banging of doors. He testified that he feels that his safety is at risk due to the tenant's threatening behaviours.

For his part, the tenant maintained that both of the upstairs tenants have alcohol addictions and their concerns with him arise from their inability to handle any type of noise or activity in the mornings when they are recovering from episodes of drinking the night before. The tenant attributed their written

statements and Witness DW's comments to their long-standing grudges against him stemming from when his children resided with him. The tenant maintained that the door to access his rental unit does not hang properly and as a result must be banged in order to close properly. The tenant denied the claims that he has been unduly noisy or that he exhibits threatening behaviours towards others in the building or in the neighbourhood. The tenant said that he has been looking for alternative accommodation, but the housing situation is very difficult in his community for the rent he can afford to pay. The tenant maintained that the landlord may be attempting to end his tenancy so that the landlord can obtain more rent from someone else.

Witness RD confirmed that police were called to escort her home on the night of October 10, when she and the tenant had a fight, shortly after they started dating. Witness RD said that that incident has not been repeated and problems of that nature were resolved once both had a cooling off period recommended by the attending police that night.

Analysis

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. In this case, the tenant has filed an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*.

Although this was the tenant's application, the burden of proof in such matters to end a tenancy for cause rests with the landlord. Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the following reasons identified in the landlord's 1 Month Notice of November 30, 2017, seeking an end to this tenancy by December 31, 2017:

> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> > *(c) there are an unreasonable number of occupants in a rental unit;*
> >
> > *(d) the tenant or a person permitted on the residential property by the tenant has*
> >
> > > *(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
> > >
> > > *(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,…*
> >
> > *(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
> >
> > > *(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
> > >
> > > *(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*

At the commencement of this hearing, I clarified that the landlord has not provided any evidence that would demonstrate that the tenant has been involved in illegal activity at the rental unit that would give reason to end this tenancy for cause.

Although the landlord maintained that the tenant's rental unit can only accommodate one person, I am not satisfied by the evidence provided by the landlord that an unreasonable number of occupants were residing at the rental unit either now or at the time the 1 Month Notice was issued.

Most of the evidence and the sworn testimony of the parties and their witnesses centered on the landlord's claim that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and to a lesser extent whether health or safety were being jeopardized by the tenant.

As outlined above, the parties and their witnesses presented very different accounts of whether the tenant's actions and behaviours are adversely affecting or significantly disturbing another occupant or the landlord. The tenant asserted that the letters from the upstairs tenants, Witness DW and his roommate resulted from disputes for which the upstairs tenants and not the tenant were responsible. The landlord testified that in addition to the written statements entered into written evidence and the testimony of Witness DW, the other tenant in this building and other neighbours were scared of the tenant and would otherwise have submitted written statements as well.

Although I have given the tenant's explanations and evidence careful consideration, including the statement from the tenant's witness, I find that the landlord has provided a range of evidence in the form of letters, written statements, and sworn testimony that establishes with sufficient credibility that the tenant has significantly interfered with and unreasonably disturbed other occupants of this building. Incidents involving violent outbursts, one of which required the attendance of the police, occurred after Landlord AA discussed the landlord's concerns with the tenant after the 1 Month Notice of September 30, 2017 was issued. Sworn testimony regarding ongoing noise and frequent comings and goings at the tenant's rental unit at late hours of the night are also consistent with the pattern of behaviours described in the letters submitted into written evidence by the landlord.

The tenant's claim that he was unaware of the reasons for the landlord's issuance of the 1 Month Notice are clearly at odds with the fact that a previous 1 Month Notice was issued only two months before the 1 Month Notice of November 30, 2017, currently before me. The landlord offered only a second-hand account of allegations that the tenant was abusive to a worker retained to repair the water line to this rental property. While there was more direct testimony from Witness DW about the stone-throwing incident in which the window of the rental unit above the tenant's was damaged, again no one actually claims to have seen the tenant involved in this incident. However, the tenant did not deny the landlord's claim that the tenant had unilaterally and without legal authorization to do so, changed the locks to the rental unit, which also presents a serious safety risk in a multi-tenanted building such as this one where a landlord must have access to all rental units in case of an emergency.

The tenant noted that questions he asked Witness DW were not answered consistently. Based on DW's testimony and demeanour during the hearing, there may in fact be at least some merit to the tenant's assertion that DW was clearly motivated to provide testimony that would serve to end this tenancy for cause. Of those who provided sworn testimony at this hearing, I found that the testimony offered by Landlord AA in a calm and dispassionate way supported the landlord's claim that the landlords have tried to give the tenant a second chance to change his behaviours allowing this tenancy to continue, but the

tenant has been unwilling or unable to do so. Under these circumstances, I find that there are genuine concerns that the tenant's actions are unacceptable and disrupting other residents of this building and this neighbourhood, even in what presents as being a rental neighbourhood that has a high tolerance level for such behaviours. The episodes involving violence and threats towards other tenants in the building and even to the tenant's own guest on one occasion after receiving an earlier 1 Month Notice less than two weeks earlier lead me to conclude that the landlord has demonstrated to the extent required that the landlord has sufficient cause to end this tenancy for cause on the basis of the significant interference with and unreasonable disturbance to the other tenants in this building and the landlord. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice of November 30, 2017.

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 to the landlord an order of possession of the rental unit if*
>
> > *(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.*

In this case, I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act.* As the landlord has accepted a payment from the Ministry for occupancy of the rental unit until the end of January 2018, I issue the landlord an Order of Possession to take effect by 1:00 p.m. on January 31, 2018.

Conclusion

I dismiss the tenant's application without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on January 31, 2018. 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: January 19, 2018

Residential Tenancy Branch