



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 an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The hearing was convened by telephone conference call and was attended by the Tenant, the agent for the Tenant (the “Tenant’s Agent”), and three agents for the Landlord (the “Agents for the Landlord”). All testimony provided was affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, a copy of the decision will be mailed to them at the dispute address. At the request of the Agents for the Landlord, a copy of the decision and any Order of Possession issued, will be e-mailed to them at the e-mail address provided in the hearing.

Preliminary Matters

Late Evidence

During the hearing it was determined that seven documents were submitted by the Tenant or the Tenant’s Agent for consideration on the morning of the hearing. Rule 3.15 of the Rules of Procedure states that the Respondent must ensure evidence that they intend to rely on at the hearing is served on the Applicant and submitted to the Residential Tenancy Branch (the “Branch”) as soon as possible and must be received by the Applicant and the Residential Tenancy Branch not less than seven days before the hearing. Despite section 3.15 of the Rules of Procedure, the Agents for the Landlord acknowledged receiving the Tenant’s late evidence and stated that they had no objections to the acceptance and consideration of this evidence in the hearing. Rule 3.17 of the Rules of Procedure states that the arbitrator has the discretion to determine whether to accept late documentary or digital evidence provided that the acceptance

of the late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Based on the above testimony of the Agents for the Landlord and pursuant to section 3.17 of the Rules of Procedure, the Tenant's late evidence was therefore accepted for consideration in this matter.

Evidence in General

The Tenant's Agent argued that much of the documentary evidence submitted by the Agents for the Landlord has no probative value, amounts to oath helping, or is hearsay evidence. The Tenant's Agent further argued that there is no reason to prefer the written evidence submitted on behalf of the Landlord over the oral evidence given by the Tenant and the witnesses for the Tenant in the hearing which was subject to cross examination. The Agent therefore argued that despite the fact that the Branch is not subject to the rules of evidence, the documentary evidence of the Landlord should ultimately not stand.

Section 75 of the *Act* states that the director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary and appropriate, and relevant to the dispute resolution proceeding. Further to this, rule 3.6 of the Rules of Procedure states that the arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the Application. As a result of the above and unless otherwise stated in this decision, I have accepted for consideration in this matter all evidence before me that met the requirements of the Rules of Procedure and I have weighed and considered this evidence accordingly on a balance of probabilities.

Throughout the hearing the Tenant's Agent made reference to and relied upon several previous decisions from the Branch, copies of which were not before me for consideration. Section 64 of the *Act* states that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part. As a result, I have based my decision on the evidence before me for consideration in this matter. In any event, as the previous decisions were not submitted to me for consideration, I have not considered them in rendering this decision.

Procedural Matters

Both parties called witnesses to provide testimony during the hearing. In accordance with section 7.2 of the Rules of Procedure, all witnesses were excluded from the proceedings except when called upon to provide testimony.

At request of the witness A.S., one of the parties present on behalf of the Landlord, J.T., was excluded from the proceedings while the witness provided testimony. As no objections were raised by the Tenant or the Tenant's Agent regarding J.T.'s presence in the hearing, J.T. rejoined the conference call after the conclusion of A.S.' testimony.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Agents for the Landlord stated that the Tenant has, on numerous occasions, significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant. As a result, the Agents for the Landlord testified that a One Month Notice was served on the Tenant.

The One Month Notice in the documentary evidence before me, dated October 26, 2017, has an effective vacancy date of November 30, 2017, and gives the following reasons for ending the tenancy:

- The Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property; and
- The Tenant or a person permitted on the residential property by the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant.

The Agents for the Landlord testified that the One Month Notice was posted to the door of the Tenant's rental unit and sent by registered mail on October 26, 2017. Although the Tenant could not recall the exact date that they received the One Month Notice, they acknowledged receiving it on or about October 29, 2017.

In support of the One Month Notice, the Agents for the Landlord submitted copies of three warning letters sent to the Tenant regarding inappropriate physical contact, inappropriate verbal statements, and physical and intimidating behaviour exhibited by the Tenant towards other occupants of the building, and a copy of a letter from the lawyer of one of the residents inquiring as to the action taken by the Landlord in relation to these incidents. In support of the warning letters noted above, the Agents for the Landlord provided copies of written complaints from five other residents of the building who stated that they were the recipients of the Tenant's inappropriate physical behaviour or verbal statements or had witnessed other residents being subjected to this behaviour by Tenant. One of the complaints also detailed an incident where the Tenant entered the unit of another resident without her consent.

The Agents for the Landlord submitted portions of a 120 page redacted police report detailing several sexual assaults, assaults, and incidents of intimidation and harassment reported by the witness A.S., to the police. In the hearing the witness A.S. provided testimony in relation to these incidents, and named the Tenant as the subject of these allegations.

The Tenant's Agent called two witnesses to provide testimony on behalf of the Tenant, both of whom are residents of the building where the Tenant resides. The first witness, G.L., identified herself as the Tenant's girlfriend of many years and testified that she has never witnessed the Tenant assault anyone. G.L. testified that she had witnessed a hug between the Tenant and another woman in the building, however, she characterised the hug as non-sexual and stated that the Tenant stopped when asked to do so.

The second witness for the Tenant, R.R., testified that he is the affiant in one of the affidavits provided by the Tenant's Agent for consideration in the hearing. He testified that in addition to the information contained in his affidavit, he has witnessed the resident A.S. with a small knife and what appears to be mace (an aerosol self-defence spray) on two occasions. When questioned by the Tenant's Agent, R.R. testified that A.S. has made unfounded claims against him and 2 other male residents of the building and that as a result, a complaint was launched against her with the building approximately one year ago. R.R. also testified that he has never witnessed the Tenant assault anyone but acknowledged that the Tenant does have a habit of standing very close to people.

The Tenant's Agent submitted affidavits from three residents of the building, one of which was R.R. In these affidavits the affiants swore that they had not personally observed the Tenant to have committed any of the actions alleged and provided statements that can be characterised as general evidence of the Tenant's good character. All three of the Affiants also stated their personal beliefs regarding the mental health of the witness A.S. and drew negative conclusions regarding the credibility of her allegations against the Tenant as a result.

The Tenant also testified that much of what has been stated by A.S. and submitted by the Agents for the Landlord is untrue. The Tenant testified that he does not make lecherous remarks and that he has never touched a woman when asked not to. He did acknowledge hugging one of the residents who has filed a complaint against him but stated that he stopped when asked to do so and does not hug her now. Overall, the Tenant stated that the complaints made against him are very farfetched

The Tenant's Agent argued that I should give little or no weight to the documentary evidence submitted on behalf of the Landlord by other occupants of the building who did not attend the hearing as much of this evidence is hearsay and was not subject to cross-examination. The Agent also argued that there is no reason for me to prefer written evidence over oral testimony that was subject to cross-examination and therefore I should prefer the oral testimony of the Tenant and the witnesses for the Tenant to the written statements from other occupants of the building submitted on behalf of the Landlord.

Analysis

Section 47 of *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Although the Tenant, the Agents for both parties, and other occupants of the building provided significant testimony and documentary evidence for my consideration in relation to this matter, for the following reasons I find that the Landlord has satisfied me, on a balance of probabilities, that they had cause under section 47 of the *Act* to end the tenancy.

Although I have attributed more weight to the affirmed testimony provided in the hearing than to the documentary evidence before me that was not subject to cross examination, ultimately I do not find that the general character evidence provided on behalf of the Tenant or the testimony Tenant have not personally observed the Tenant to have committed any of the actions alleged, outweighs the preponderance of evidence before me from several occupants of the building that they themselves have either been witness to or subjects of the Tenant's inappropriate physical contact, inappropriate verbal statements, and physical and intimidating behaviour.

Further to this, although the Tenant's Agent and all three of the affiants for the Tenant made statements regarding the mental health of the witness A.S., there is no evidence before me to substantiate or suggest that either the Agent for the Tenant or any of the affiants or witnesses is a medical professional qualified to make assessments regarding mental health. As a result, I have afforded these statements and the credibility arguments based upon them no weight.

Although the Tenant's Agent pointed out that the police evidence shows that the Tenant was never charged, as the One Month Notice was not served on the Tenant because the Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity, I do not find this fact fatal to the One Month Notice or indicative in and of itself, that the Tenant did not engage in the activity alleged by the other residents.

Based on the above, I find that the Landlord has established, on a balance of probabilities, that they had sufficient cause pursuant to section 47 of the *Act* to end the tenancy because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant. As a result, the Tenant's Application to cancel the One Month Notice is dismissed without leave to reapply.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the *Act* as it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the notice and the grounds for ending the tenancy, and is in the approved form.

Given the above, and pursuant to section 55 of the *Act*, the Landlord is therefore entitled to an Order of Possession. As the effective date of the One Month Notice, November 30, 2017, has passed, the Order of Possession will be effective two days after service of the Order on the Tenant.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 30, 2018

Residential Tenancy Branch