



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated January 3, 2018

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Section 63(2) of the Residential Tenancy Act allows provides that an arbitrator may provide the parties with an opportunity to settle the matter. The parties made extensive efforts to settle this matter after the hearing had been concluded but were unable to reach a settlement.

I find that the one month Notice to End Tenancy was personally served on the Tenant on January 3, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on January 11, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated January 3, 2018?

Background and Evidence:

The tenancy began on December 1, 2014. The present rent is \$465 per month payable in advance on the first day of each month. The rent is subsidized. The tenant paid a security deposit of \$375 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- 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:
 - damage the landlord's property
 - 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
- Tenant has caused extraordinary damage to the unit/site or property/park

The Applicant's dispute description states "I have lived her for 3 years and have never had any serious problems. I have not received any warning letters or been told why there is cause for my eviction. I dispute all listed causes the landlord has names."

The landlord seeks to end the tenancy based on the following evidence:

- On November 15, 2017 the landlord received a complaint from NT, a resident of another building. The tenant gave her a letter apologizing for his behavior. The tenant placed this letter under her door after gaining access to the building by having another resident open the front door.
- On November 15, 2017 the landlord gave the tenant a letter that expressed "concerns about his behavior with respect to other tenants." It continued stating all tenants have a right to privacy, quiet enjoyment and safety and referred to a provision of the tenancy agreement relating to tenant conduct. The building manager testified the tenant saw him above this and he explained the particulars of the complaint. The police were called and they discussed the matter with the tenant.
- On November 29, 2017 the landlord received a complaint from TL, another resident on the property. The complaint states that the power went out and she overheard the tenant stating "Someone was going to get it." The tenant then

started to call her names including that she was a skunk, ugly and fat. She talked to the landlord about this and she advised the landlord she was intending to call the police.

- The landlord produced a note from JW dated December 6, 2017 that stated the tenant knocked on her door in the early morning of December 6, 2017 wanting to apologize and talk about his son.
- In late December the landlord received a complaint from TM about the tenant being intoxicated and carrying a can of beer in the common area. The landlord wrote the tenant second letter dated December 28, 2018 expressing concerns about his behavior and referring to the provisions of the tenancy agreement relating to conduct. The landlord testified the tenant came to see him about this letter and he explained the basis for it.
- On January 2, 2018 the landlord received a call from another resident that at about 5:20 a.m. the tenant was attempting to kick in her door and break into her residence. The police were called and the tenant was taken into custody. He was charged with mischief and that matter is before the courts. The security cameras show the tenant was hitting the door of the other tenant with his shoulder at 3:59 a.m. There are several photos of him kicking at the door at 5:21 a.m.
- The resident of that unit provided a lengthy letter outlining her personal troubles she had been experiencing. She and the tenant had a relationship at one time. However, that relationship had come to an end. The letter describes the conduct of the tenant of "being a stalker." Unfortunately this resident passed away at the end of January 2018. The tenant paid \$41.70 for the cost of repairing the door and lock.

The tenant gave the following evidence:

- He testified he was drinking with acquaintances in the evening leading up to the morning of January 2, 2018. He had 3 beers and a shot of Crown Royal. Someone must have slipped a drug into his drink. He has no memory of the incident of kicking the door in. He was put in jail and did not wake up until 15 hours later. During the incident he was talking to the walls.
- This behavior is out of the ordinary for him.
- He explained his behavior relating to NT as simply wanting to walk her home from her work and apologizing for how his actions were misinterpreted.
- The landlord failed to give him sufficient warnings. The letters were too general and did not apply to him.

Analysis:

All of the evidence was carefully considered. While the evidence of the landlord could have been stronger I determined the landlord has established sufficient cause to end the tenancy for the following reasons:

- The landlord produced letters and notes from three residents relating to the behavior of the tenant. While that evidence is admissible it would have been better had they testified in person.
- The conduct of the tenant in trying to kick the door in of another resident in the early hours of the morning is egregious and on this basis alone there are grounds to end the tenancy. The other resident was terrified. The fact that she has passed away cannot be seen as a defense. The landlord has a legal obligation to protect the safety of all tenants and this conduct is outrageous..
- The tenant's explanation that he has no recollection of the event and that it must have been caused because someone put a drug in his drink is not satisfactory and a matter of great concern. The tenant failed to produce any corroborating evidence to support this testimony. No explanation was given as to why someone might do this. No medical evidence was presented to establish there was a drug in his system. The tenant failed to provide evidence that a drug might cause a person to become extremely aggressive to the extent of trying to break into another resident's unit.
- I do not accept the submission of the representative of the tenant that he was unaware of the complaints of his behavior. The letters of November 15, 2017 and December 28, 2017 regarding the tenant's behavior were general in tone. While it would have been better had the landlord specifically referred to the incidents in question, I am satisfied the tenant was fully aware of the complaints as on both occasions he saw the landlord and the landlord explained the nature of the complaints. The police were called a number of times. I determined the tenant was aware of the concerns about his behavior.

Determination and Orders:

After carefully considering all of the evidence I determined the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Further he has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Finally he has engaged an illegal activity that has damaged the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord

I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy. I order that the tenancy shall end. The rent has been paid for March. I order that the tenancy shall end on March 31, 2018.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective March 31, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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: March 11, 2018

Residential Tenancy Branch