



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed February 14, 2018 wherein the Tenant sought to cancel a 10 Day Notice to End Tenancy for Cause issued on February 12, 2018 (the Notice") as well as an Order restricting the Landlord's right to enter the rental unit and recovery of the filing fee.

The hearing was conducted by teleconference on April 19, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was assisted by her realtor who acted as her translator.

At the conclusion of the hearing, the Tenant stated that the evidence submitted by the Landlord was received by him on April 13, 2018. The Landlord's witness, C.W., confirmed that the Landlord's evidence was served on the Tenant on April 11, 2018 at 8:27 p.m.

I accept C.W.'s evidence as to the delivery of the Landlord's evidence.

No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord's right to enter the rental unit be restricted?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began August 2017. Monthly rent is \$800.00 per month for a one bedroom apartment.

The property has been listed for sale twice during the tenancy. Since December 7, 2017 the property has been listed with C.W., who appeared and gave evidence at the hearing.

The Landlord stated that initially the Tenant was agreeable to verbal notice of showings of the property, however, when he insisted that written notice be given she began giving him proper written notice. She stated that despite providing him written notice, he refused entry to her realtor and prospective buyers.

The Landlord issued a Notice of Entry to show the rental unit on February 7, 2018. The Tenant refused to allow access to the rental unit for showing.

C.W. testified that on February 7, 2018 the Landlord called her and was very upset and shaken. She reported that the Tenant threatened her life on that day when she tried to talk to him about the showing. C.W. stated that there is an expression in Chinese that translates in English to "If you try me I won't hesitate"; he noted that while it doesn't sound like a death threat in English, in Chinese it is considered very serious and is a life threat. C.W. stated that he confirmed the severity of this expression with others and as the Landlord was so upset and shaking, he told her to call the police. The Landlord called the police and although the Tenant wasn't charged, he was spoken to by the police.

C.W. stated that the Landlord has not been able to show the property since as the Tenant continues to refuse showings.

The Landlord issued the Notice on February 12, 2018. The reasons cited in the Notice are as follows:

- 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;
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or,
- the Tenant has engaged in illegal activity that has caused or is likely to jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

C.W. stated that the Landlord also issued a Notice on February 23, 2018 for a showing on February 24, 2018 and again the Tenant refused access to the rental unit. He stated that he brought the clients in to show the suite and the Tenant refused entry and then yelled at the realtor and scolded him through the closed door.

C.W. stated that as he has not been able to show the rental unit as he cannot show the suite to prospective buyers. He confirmed that most of the interested buyers wanted to keep the Tenant and he attempted to tell the Tenant this but he refused to listen and would simply yell and shout through the door.

C.W. stated that on February 23, 2018 the Landlord tried to approach the Tenant to have a mutual time to have showings and again the request was rejected. In response the Tenant stated that he would not do any showings period, unless the police came and kicked him out, or he received a notice to end the tenancy.

C.W. stated that the property is properly priced and he has received steady requests for showing as well as requests for second showings. He submitted that it would have likely sold already but as he can't show the suite he can't sell the property.

In response to the Landlord's testimony the Tenant testified as follows. He confirmed that he is refusing the Landlord's request to show the rental property claiming that the Landlord doesn't care about his feelings about when the rental unit is to be shown.

The Tenant confirmed that he told the Landlord that he would not let anyone in to view the rental unit, even when she gave him written notice to enter.

In response to the Landlord's claim that the Tenant threatened him, the Tenant initially stated that he didn't think he said the equivalent of: "If you try me I won't hesitate" in

Chinese to the Landlord. He then denied he said it. He also stated that he didn't think that phrase was considered a death threat.

When I asked the Tenant if he was aware that prospective buyers were interested in having a tenant, he responded that the realtor was not telling the truth. He also claimed he did not yell at the realtor or scold him on February 24, 2018, he merely told them not to bother him anymore through the closed door. He stated that he refused the realtor entry because at that time the Landlord issued the Notice to end the tenancy.

Voice recordings were provided in evidence by the Landlord, however the persons speaking were speaking in Cantonese and I therefore could not understand. C.W. confirmed the content of the recordings as follows:

- February 7, 2018: the Tenant refusing to cooperate with showings. He was firm about not letting potential buyers into the rental unit.
- February 13, 2018: the recording shows that the Tenant refuses to cooperate and was not willing to sign a mutual agreement to end the tenancy.
- February 23, 2018: the recording shows the Tenant absolutely refusing to agree to allow any potential buyers in the rental unit again "no matter what".

The Tenant did not dispute C.W.'s testimony regarding the content of the voice recordings. The Tenant also stated that once he received the Notice he felt that he didn't need to cooperate with the Landlord any further. The Tenant further stated that he didn't try to work with the Landlord because she gave too much pressure.

Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find the Tenant's application should be dismissed.

While a Tenant is entitled to exclusive possession of a rental unit pursuant to section 28 of the *Act*, section 28 (c) clearly provides this is subject to a Landlord's right to enter the rental unit pursuant to section 29 which provides as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I accept the Landlord's evidence that the Tenant has denied her access to the rental unit, despite the fact she has given him proper legal notice pursuant to section 29. I also accept her evidence that the Tenant intimidated and frightened her on February 7, 2018 when she attempted to discuss the issue with her. While I am not able to conclusively find that he made a threat to her life, I do find that he communicated with her in an aggressive manner which caused her to fear him.

I further accept that the Tenant has yelled at the realtor when he has attempted to show the rental unit to prospective buyers. The Landlord has the right to sell the rental property, and showings to prospective buyers are necessary to accomplish this goal. I accept the realtor's evidence that he is not able to show the property as the Tenant has denied entry and has been aggressive when he has attended.

The Tenant admitted to denying the Landlord and her realtor entry to the rental unit. He claimed that he initially did so because he believes the Landlord doesn't care about his feelings. He then stated that he was refusing access because she issued the Notice. Section 29 gives the Landlord the right to enter the rental unit provided that she complies with the notice provisions. The Tenant is not entitled to deny the Landlord legal access to the rental unit.

I find that the Landlord has proven on a balance of probabilities that the Tenant has seriously jeopardized the lawful right of the Landlord to show the rental unit for the purposes of sale of the property.

Having dismissed the Tenant's claim to cancel the Notice, I grant the Landlord an Order of Possession pursuant to section 55 of the *Act*. The Landlord must serve the Order on the Tenant and this Order will be effective two days after such service on the Tenant. If the Tenant does not vacate the rental property, the Landlord may file and enforce the Order in the B.C. Supreme Court.

I am not satisfied the Landlord has breached section 29 of the *Act*, as such, the Tenant's application for an Order restricting the Landlord's right to enter the rental unit is dismissed. Having been unsuccessful in his application I also deny his claim for recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed in its entirety.

The Landlord is granted an Order of Possession effective two days after service.

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: April 19, 2018

Residential Tenancy Branch