



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITAT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Cause pursuant to section 55; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The tenant confirmed receipt of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and that she did not make her own application to cancel the 1 Month Notice.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began in 2010 as a month-to-month tenancy. The current property owners took possession after that date. The tenancy agreement submitted for this hearing indicates a start date of February 1, 2012. The current rental amount is \$328.00 and paid with subsidy assistance. The landlord sought an Order of Possession for Cause based on repeated complaints about the tenant's son from neighbours and staff at the residential premises.

A copy of the One Month Notice was submitted as documentary evidence for this hearing. In that Notice, requiring the tenant to end this tenancy by February 28, 2018, the landlord cited the following reasons for the issuance of the 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.*

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.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Landlord JB testified that, as a result of the tenant allowing her son access to her rental unit and the residential premises, she has created conditions that have caused ongoing interference with the other residents to the premises: they are regularly disturbed by noise and threatening behaviour, according to the landlord. Landlord AM testified that the property itself has been damaged as a result of the tenant allowing her son access. He provided a list of damage done after incidents involving the tenant's son including but not limited to: damage in the stairwells (smoke and other property damage); destroying the tenant's door by kicking it in; and other damage as a result of physical altercations and misuse of the premises by the tenant's son.

The landlord submitted approximately 6 letters written to the tenant over the previous year. Those letters, from the landlord to the tenant, advised her of the complaints that the landlord has received about noise from her rental unit including; banging on a door and other excessive noise including arguing, physical fighting, screaming, crying; loitering in the stairways; smoking in the stairways; unauthorized guests in the rental premises. On December 15, 2017, the landlord wrote to the tenant to summarize a meeting between the parties the previous day. It reads,

[As] per the discussion with management on December 14, 2017, regarding your son's behaviour/actions while on the property...

An agreement was made that you would show us what has been done to stop and/or minimize the actions of your guest.

...we agreed on ...a 2 week timeline to show management what steps are being taken by you...

The landlord submitted copies of the complaints by other occupants on the premises as well as the security logs for this staffed residence as evidence. Log entries included several staff calls to the police and the details of police attendance to the property. Both representatives for the landlord testified that they have made significant attempts to work with the tenant to ensure that she can address the son's behaviour and ensure that she is safe, allowed to remain in her rental unit. Landlord JB testified that this application for an Order of Possession is a step they had hoped to avoid but that the situation has gone on too long without any change.

The tenant also submitted evidence for this hearing including handwritten submissions and copies of some of the letters from the landlord. The tenant wrote that she is a senior with recent health issues (including a broken hip). She wrote that she believes she is a good tenant and she does not want her tenancy to end because she has lived on the property a long time. She testified at this hearing and wrote that she has developed resources to assist her living in the community. The tenant wrote and testified that she spoke with the security at the residential premises. She testified that she told them to refuse her son access to the rental unit anymore but that the security has not helped her in her attempts to remove her son. She testified that she believes the landlords could have done more to assist her.

The tenant wrote and testified that her son is very abusive and that she has called the police on a number of occasions. She testified that she believes that the police have banned her son from the property. She testified that, while her son continues to come to the premises, she refuses to let him in. She believes that she has taken all of the steps required of her by the landlord in addressing this issue. The landlord submitted that the tenant has not taken these steps. The landlord testified that she is not aware of any attempts by the tenant to deny her son access to the premises.

Analysis

I accept the testimony of the two representatives for the landlord. They spoke in a candid and compassionate manner about the tenant. They provided evidence that they have warned the tenant several times over the course of a year that the tenant will face serious consequences if she cannot cease letting her son in the building. The landlord has submitted supporting evidence to show that they have written the tenant repeatedly regarding her son's access to the property.

I accept the testimony and evidence of both representatives for the landlord that the tenant's son is an ongoing disturbance to other occupants on the residential premises and that he represents an ongoing risk of damage to the landlord's property including, perhaps most seriously, the tenant's son kicking her door in. The tenant disagreed with some of the evidence submitted by the landlords to show her son has damaged the property but she did not dispute that her son is a disruption at the rental unit – she simply states that she has done everything she can.

While the tenant referred to a police ban of the son at the property, the landlord refuted this claim and the tenant provided insufficient evidence to show that any ban was in effect. In all of the circumstances, I find that the landlord has proven that the tenant or a person permitted on the property by the tenant (specifically the tenant's son) has significantly interfered with or unreasonably disturbed other occupants and put the landlord's property at significant risk. The other grounds (breach of a material term, illegal activity, extraordinary damage to the property) will not be considered in this decision as I have found that the landlord has provided evidence to support their request for an Order of Possession.

Based on all of the evidence before me, I am satisfied that the landlord had sufficient grounds to issue a 1 Month Notice and obtain an end to this tenancy for Cause on the grounds described above. Furthermore, the tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of the tenancy on the effective date of the notice (February 28, 2018). As the tenant has not vacated the rental unit as of the date of this hearing, I find that the landlord is entitled to a 2 day Order of Possession

As the landlord was successful in their application to end the tenancy, I find that the landlord is also entitled to recover the filing fee from the tenant.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord in the amount of \$100.00 for the filing fee. The landlords are provided with this monetary 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 Small Claims Division of the Provincial Court 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: May 16, 2018

Residential Tenancy Branch