



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAWSON CREEK SOCIETY FOR COMMUNITY LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the *Act*”) for an order to cancel a One Month Notice to End Tenancy given for Cause (“the Notice”) pursuant to section 47 of the *Act*.

The landlord’s agent SP confirmed receipt of the tenant’s Application for Dispute Resolution and evidence within the time prescribed by section 49 (8) of the *Act*. Both parties confirmed receipt of the packages of evidence filed by the other and, that they had adequate time to review and respond.

Both the tenant and the landlord’s agent SP appeared at the hearing. The tenant was also assisted at the hearing by an advocate AH. All parties present were given a full opportunity to be heard, to present their affirmed testimony and to make submissions. The tenant and his witness KW gave affirmed testimony as did the agent for the landlord SP.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, that I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the landlord’s One Month Notice to End Tenancy, pursuant to Section 47 (4) of the *Act*?

Should the tenant be unsuccessful in seeking to cancel the One Month Notice to End Tenancy for Landlord's Use of Property is the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence, including any and all reports, photographs, diagrams, miscellaneous documents, letters, e-mails, and also the testimony of the parties, not all details of the evidence or the parties' respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

There is a written tenancy agreement filed dated April 27, 2017, that states the tenancy started on May 1, 2017, on a month to month basis (the "Agreement"). The Agreement confirms that the portion of the monthly rent payable by the tenant is \$595.00 per month, payable on the first day of each month. The balance of the rent is subsidized by the Government of BC.

The landlord issued the Notice seeking to end the tenancy based on sections 47 (1) (d) and (e) of the *Act*. The Notice was issued on April 19, 2018 with an effective vacancy date of June 1, 2018 citing the tenant or a person permitted on the property by the tenant had engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant and, that the tenant has seriously jeopardized a lawful right or interest of another occupant.

The Notice is dated April 19, 2018, and was served on the tenant and received by him personally on April 19, 2018. The tenant made his Application for Dispute Resolution on April 19, 2018, the same day he admits receiving the Notice.

The tenant brought the Application for Dispute Resolution dated Application on April 19, 2018. The basis of the tenant's application is that he denies conducting any illegal activity or having seriously jeopardized a lawful right or interest of another occupant.

It is the evidence of the landlord that the tenant stole a BBQ propane tank that is the property of another tenant, WT. WT provided a written statement filed as part of the evidence that the theft occurred on April 12, 2018. Her statement is that she witnessed the tenant of Unit #7 walk out of his home and go to her BBQ and remove the tank and take it. Staff were alerted and they attended and saw tracks in the snow consistent with what WT had seen. Later that same day WT identified the tenant to Staff as the person

who took her BBQ tank without her permission. This incident was reported through various staff and was eventually brought to the attention of the landlord's agent SP.

The evidence of the landlord is that the BBQ tank was taken on April 12, 2018 and was not returned until April 23rd.

SP testified that he asked the tenant to come to a meeting to discuss the situation on April 19, 2018. Also at the meeting were the landlord's Maintenance Coordinator KM and, the landlord's Executive Director MR. SP gave evidence that at this meeting the tenant originally denied doing anything wrong but later admitted to taking the BBQ tank stating he had just borrowed it.

SP also testified that WT is 72 years old and has some developmental issues (as do many of the tenants in the rental complex.) It was his uncontradicted and unchallenged evidence that he spoke directly with WT about this incident and that she was very upset as a result. No apology was ever made to WT about this incident and there was some evidence that both WT and staff were harassed and made to feel threatened by the tenant and his witness KW after the tenant was served with the Notice. SP stated that the complex is full of vulnerable people and, that management felt a bond of trust had been broken by the actions of the tenant.

There is a written statement of KM filed in evidence that confirms he was witness to both WT's identification of the tenant as the person who took her BBQ tank and, the admission by the tenant to doing so.

It is the evidence of the tenant that he had never seen anyone use the BBQ where he took the tank from the entire time he has lived at the rental complex; that he thought the BBQ was abandoned; that he asked a neighbour who happened to be going by (whose name he does not know), whose BBQ it was but they didn't know and; that he was only borrowing the tank from the BBQ.

The tenant states in his evidence that the reason he was borrowing the tank was to use it to test to see if the BBQ of his friend KW had been damaged during a recent theft of her own BBQ tank. He also admits to using the tank of propane to BBQ food for himself and KW on her BBQ. He states that he returned the tank to where he got it after about 2 days. He points out that the police were not called and that he has not been criminally charged because of this incident. He admits that he never asked any Staff members about who owned the BBQ before he borrowed the tank.

KW in her evidence confirms the tenant's version of events as it related to him bringing a BBQ tank to her home and them using it there. She also stated that she has never seen anyone use the BBQ the tank came from. However, she went on to say that there is a person who has had several outdoor social events in the complex where the tenant lives that included a BBQ. This person lives in unit 7 – which is in fact the unit occupied by WT. The witness then changed her evidence stating she was confused about unit numbers.

Analysis

Based on the undisputed testimony and documentary evidence I find that the tenant was properly served with the Notice and, I find that the Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

A landlord may end a tenancy for cause pursuant to section 47 of the *Act* if any of the reasons cited in a One Month Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...

- (e) the tenant...has engaged in an 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*

The relevant law is summarized in *Residential Tenancy Policy Guideline 32: Illegal Activities*. It sets out that the party alleging the illegal activity has the burden of proving that the activity was illegal. In considering whether the illegal activity is sufficiently serious to warrant terminating the tenancy the arbitrator should consider such matters as the extent of the interference with the quiet enjoyment of other occupants, extent of

damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants. The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard but is the same as for ending a tenancy for any cause permitted under the legislation; proof on a balance of probabilities. Further, a criminal conviction is not a prerequisite for terminating the tenancy.

Overall, I did not find the evidence of the tenant to be credible. His story did not have a ring of truth to it. Specifically, he did not say why he thought there would be propane in the BBQ tank of what he considered to be an abandoned BBQ. He did not have any real explanation as to why and how he thought he could take someone else's property and use it without asking permission. As pointed out by the landlord's agent, the tenant knew the BBQ tank was not his when he took and used it. The tenant's witnesses evidence did not touch on the central issue in this matter – being whether the tenant stole the property of WT.

I find, on a balance of probabilities, that the 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; that the landlord has established cause for ending this tenancy; and that the 1 Month Notice to End Tenancy for Cause dated April 19, 2018, is valid.

The tenants' application is therefore dismissed.

Section 55(1) of the *Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant an order of possession of the rental unit to the landlord if, the landlord's notice meets the form and content requirements of section 52.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the One Month Notice to End Tenancy for Cause issued by the landlord on April 19, 2018 complies with the requirements set out in Section 52.

The landlord is entitled to an order of possession effective at 2:00 P.M, on June 1, 2018. If necessary, the order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenants' application is dismissed and the landlord is granted an order of possession.

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: June 6, 2018

Residential Tenancy Branch