



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMPBELL RIVER HEAD INJURY SUPPORT SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated March 27, 2018 ("1 Month Notice"), pursuant to section 47.

The tenant did not attend this hearing, which lasted approximately 30 minutes. The landlord's agent, JK ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the housing and program coordinator for the landlord company named in this application and that she had authority to speak on its behalf as an agent at this hearing. "Witness SE" testified on behalf of the landlord at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord confirmed that the tenant was served with the landlord's written evidence package on May 24, 2018 by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence package on May 29, 2018, five days after its registered mailing. I notified the landlord that I would consider the written evidence package at the hearing and in my decision because it was deemed received by the tenant at least 7 days before the hearing date, in accordance with Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*.

The landlord testified that the tenant was served with the landlord's 1 Month Notice on March 27, 2018, by way of posting to his rental unit door. The landlord provided a signed, witness proof of service with its written evidence package. The notice indicates an effective move-out date of May 1, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on March 30, 2018, three days after its posting. I also note that the tenant applied to cancel this 1 Month Notice in this application.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began around July 1, 2017. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement.

The landlord issued the 1 Month Notice for the following reason:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord testified that the tenant has been aggressive, noisy and threatening towards one "occupant G" in the rental building who provided two written complaints against the tenant, as well as other occupants who are too scared to come forward and issue written complaints to the landlord because of repercussions from the tenant. She stated that she has spoken to the tenant, he has always denied the complaints, and that she is aware of the tenant's loud parties and his visitors hanging around the building, who make the other occupants in the rental building nervous.

Witness ST testified that she lives in the rental building, down the hall from the tenant, and is a manager in the rental unit, acting as the eyes and ears of the landlord. She claimed that she takes rent from occupants and receives complaints from them which she passes on to the landlord. She said that since the tenant moved into the rental building approximately one year prior, he has been problematic, a heavy drinker, loud in the common area hallways and belligerent towards others, starting fights with other occupants. She said that the tenant cannot keep to his own rental unit, especially when drinking with his friend "C," so that when other occupants ask him to quiet down, he gets upset. She explained that she is afraid to confront the tenant herself because she is pregnant and also has a three-year-old child, so she is afraid for their safety.

Witness ST stated that she observed one incident on January 10, 2018, when she peeked out from her rental unit doorway down the hall to where occupant G and the tenant were involved in a verbal argument. She claimed that the tenant was in the hallway and occupant G was in the doorway of his own rental unit. She said that the tenant was being aggressive and lunged at occupant G, who was blocking the doorway where his daughter was inside the unit. The landlord claimed that after the incident, occupant G provided her with a written complaint and notified her about it, after which she issued a warning letter to the tenant.

Witness ST claimed that she observed the second incident on March 23, 2018, while peeking her head out from her rental unit doorway, when the tenant was banging his head on the front door of his friend C's apartment, in the common hallway. She stated that she saw occupant G poke his head out from his own unit to tell the tenant to stop banging his head and making noise. She said that the tenant then became verbally aggressive, asking occupant G if he wanted to fight and as occupant G was retreating to his own unit to be with his daughters, the tenant lunged at occupant G in the doorway. The landlord stated that she received written complaints from occupant G and witness ST and that she issued the 1 Month Notice to the tenant after the second incident.

The landlord provided copies of three complaint letters, one dated January 10, 2018 from occupant G, and two dated March 23, 2018 from occupant G and witness ST. She said that a warning letter, dated January 15, 2018 was issued to the tenant on January 17, 2018, regarding the first incident. She said the tenant was warned about his unacceptable threatening behaviour towards the other occupant and cautioned that further behaviour would result in an eviction notice. After the second incident, the tenant was provided with the landlord's 1 Month Notice on March 27, 2018.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant was deemed to have received the 1 Month Notice on March 30, 2018, and filed his application to dispute it on April 6, 2018. Therefore, he is within the time limit under the *Act*. However, he did not appear at this hearing in order to present his case.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason since I find that the tenant significantly interfered with and unreasonably disturbed occupant G and the landlord's agent, witness ST, who both live in the rental building.

I accept the testimony of the landlord and witness ST, who both confirmed that the tenant was aggressive and threatening with occupant G on January 10, 2018 and March 23, 2018. The tenant was given a warning letter by the landlord on January 17, 2018, regarding the first incident but continued with his behaviour. The tenant was warned in this letter that he could be given a notice to end tenancy if he did not stop his behaviour. After the second incident on March 23, 2018, the tenant was given the 1 Month Notice. Witness ST confirmed that she witnessed both of the above events and that she felt personally unsafe and avoided confronting the tenant because she is pregnant and has a small child.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As noted above, I dismissed the tenant's application. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. Accordingly, I find that this tenancy ends pursuant to an order of possession effective two (2) days after service on the tenant, as the landlord confirmed during the hearing that the tenant did not pay rent for June 2018. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's entire application is dismissed without leave to reapply.

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 11, 2018

Residential Tenancy Branch