



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDCT

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated April 26, 2018
- b. A monetary order in the sum of \$1000.

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.

I find that the one month Notice to End Tenancy was personally served on the Tenant on April 26, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on May 1, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated April 26, 2018?
- b. Whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence:

The tenant testified he moved into the rental property in January 2009. The landlord produced a written tenancy agreement for this rental unit that provided that the tenancy would start on March 1, 2011. The present rent is \$328 per month. The rent is subsidized. The tenant did not pay a security deposit.

The rent for July 2018 has been paid and it was accepted by the landlord on a “use and occupation basis.”

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

The landlord JW gave the following evidence:

- On July 4, 2017 the tenant approached the building attendant and security guard for the rental property. The building attendant is an employee of the landlord. The security guard is an employment of an independent contractor. The landlord produced an Incident Report from the employee and a statement from the security guard. The document stated that the tenant approached them and directed foul language and racist comments at the two individuals. He then threatened to kill the security guard. The police were called as a result of this incident. The Tenant was questioned but not charged.
- The landlord testified her received at a report from a contractor later in July 2017. The contractor told him the tenant threatened to kill him. However, the contractor did not want to pursue this and did not file a written complaint.
- On February 28, 2018 the Tenant approached JW in the parking lot. There was an ongoing dispute between the Tenant and the landlord over compensation if any to be paid to the tenant for property that had been damaged by a sanding contractor. JW is the Property Manager for the landlord. The Tenant told JW that he owed the Tenant money for his damaged property. As JW approached the tenant to discuss possible resolution of the problem the Tenant “No ideas you fuck-off. I’m going to kick the shit out of you. I’ll break you neck.” As JW walked away the tenant threatened “You’re a dead man.”
- The RCMP were called as a result of this incident. The landlord alleged the tenant avoided the police. However, in late April the tenant was charged with two counts of uttering threats. The trial for those two charges has not yet been heard.
- The landlord produced a letter from WW another tenant in the rental property complaining about the conduct of the Tenant.

JB gave the following testimony:

- The threats are an ongoing pattern of behavior.
- The landlord is particularly concerned as other Tenants are fearful of him. They are vulnerable individuals and need to be protected.
- There was a delay of two months from the February 28, 2018 incident before the landlord served the eviction notice as the landlord was waiting for the police and Crown to charge the Tenant. The Tenant was avoiding the police at the time.

On cross examination JW testified as follows:

- He acknowledged a warning letter was not given to the Tenant after the July 4, 2017 incident and the February 28, 2018 incident.
- The delay in giving the tenant the eviction notice after the February 28, 2018 was waiting for the Crown to lay charges.
- He does not believe the tenant was arrested after the February 28, 2018 incident. The police attended but they could not locate him.
- The landlord took over the operation of the rental property in 2017. They do not have access to records prior to that time.

The Advocate for the tenant did not cross examine JB.

The Tenant provided the following evidence:

- The tenant wanted to explain the origin of the dispute between the parties. Work began on the rental property in April 2017. In May 2017 the contractor involved in sandblasting the exterior of the rental property failed to ensure his rental doors and windows to his rental unit was closed. Dust from the sandblasting got into the rental unit and damaged his CD player, his DVD player, his Play Station and 40 CDs.
- He complained to management shortly after the incident but management dragged their feet and failed to compensate him for his losses.
- At one stage in a meeting held between the contractor, the landlord and the tenant the contractor was prepared to reimburse the tenant but the landlord stopped him from doing so saying the landlord would take care of it.
- JW told him he would not be getting any money from the landlord.
- The tenant's witness testified he was asked to set up a meeting to try to resolve the issues. He confirmed the evidence of the tenant that contractor was prepared to compensate him but the landlord told the contractor that the landlord would take care of it.

JW testified his recollection of the meeting is entirely different and that the contractor was adamant they were not going to pay the Tenant.

The tenant failed to provide evidence to evidence his loss or the quantum of his loss.

Analysis – Application to Cancel the One month Notice to End Tenancy:

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy for the following reasons:

- I accept the evidence of JW that the tenant threatened to kill him in the incident that occurred on February 28, 2018. The Tenant failed to give sufficient evidence to dispute this testimony.
- I accept the evidence produced by the landlord from the building attendant and security guard in the form of statement they made in the ordinary course of their work that the tenant uttered racial profanities and threatened to kill in an incident that occurred on July 4, 2017. Again the tenant failed to give sufficient evidence to dispute this evidence.
- I determined there is no justification for this conduct by the tenant and it is sufficiently serious to warrant the eviction steps taken by the landlord. While I understand the explanation given by the Tenant this does not justify his conduct. There are other ways the tenant could have proceeded.
- While it would have been better had the landlord documented these incidents and given warning letters the failure to do so does not detract from the seriousness of the misconduct.
- Further, while I understand the submission of the advocate for the tenant suggesting the two month delay after the February 28, 2018 incident to serve the eviction notice is evidence that the landlord did not take it that seriously. However, I accept the explanation of the landlord that they wanted to first wait for the police and Crown to decide whether charges were going to be laid.
- I am satisfied that the tenant has significantly interfered with or unreasonably disturbed the landlord and has seriously jeopardized the health or safety or lawful right of the landlord.

Determination and Orders:

After carefully considering all of the evidence 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. As the rent has been paid for July (and accepted on a “use and occupation basis”) I set the end of tenancy date for July 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 July 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.

Application for a Monetary Order:

The tenant sought a monetary order in the sum of \$1000 for damage to his personal property.

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that

The tenant believes the landlord is responsible for damage to his belongings. However, the tenant failed to provide sufficient evidence to prove what was damaged and the value of what was damaged. While an arbitrator has the authority to dismiss a claim without liberty to re-apply in the circumstances such as this I determined such an order

would not be appropriate. I dismissed the tenant's monetary claim with liberty to re-apply.

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: June 29, 2018

Residential Tenancy Branch