



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On August 3, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for Cause. The matter was set for a participatory hearing via conference call.

The Agents for the Landlord and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral evidence and to make submissions at the hearing.

I have reviewed all the oral evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord stated that they did not submit any evidence for the hearing and the Tenant stated that he did not serve the evidence that he had submitted to the Residential Tenancy Branch to the Landlords. I find that the evidence was not exchanged between the parties according to Rule #3 in the *Residential Tenancy Branch -Rules of Procedure*; therefore, none of the evidence that was submitted, was referred to during the hearing.

Please note that I provided permission for the Landlord to upload evidence, after the hearing, that both the Tenant and the Landlord were aware of and that both parties referred to during the hearing. I asked the Landlord to forward the warning letter, any documents that referred to the criminal charges and conditions for the Tenant and the

Notice to End Tenancy. I received all of these documents, except for the warning letter, to assist in supporting the testimony from both the Landlord and the Tenant.

Issue to be Decided

Should the One-Month Notice to End Tenancy for Cause, dated July 30, 2018, (the "Notice") be canceled in accordance with Section 47 of the Act?

Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The month-to-month tenancy began on January 1, 2017. The monthly rent of \$720.00 is due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$340.00.

Landlord evidence:

The Landlord testified that the Tenant had engaged in illegal conduct that significantly interfered with the quiet enjoyment and security of another tenant. The other tenant is a female neighbour of the Tenant, within the residential property. The Landlord stated that the female tenant, who was upset and fearful, had approached the management of the residential property and relayed her concerns of harassment by the Tenant in mid-July 2018.

The Landlord (JC) stated that he had had several conversations with the Tenant about not bothering the female neighbour. On July 24, 2018, the Landlord stated that they had provided a written letter to the Tenant and warned him about breaching a material term of the Tenancy Agreement regarding his conduct and interactions with females in the residential property.

On July 30, 2018, the Landlord (JC) personally served the Notice to End Tenancy to the Tenant. The Notice stated that the Tenant had unreasonably disturbed another occupant, seriously jeopardized the health or safety or lawful right of another occupant, had adversely affected the quiet enjoyment, security and safety of another occupant and jeopardized a lawful right of another occupant. The Notice indicated that the Tenant must move out of the rental unit by August 31, 2018.

The Landlord testified that the police attended the residential property to deal with the concerns of the female neighbour, about the Tenant, on several occasions and that this resulted in the Tenant being arrested and charged for two counts of criminal harassment. The Tenant was released on criminal conditions that included that he have no direct or indirect contact with his female neighbour.

The Landlord is asking for an Order of Possession as they believe the Tenant has not only breached Section 28 (entitlement to quiet enjoyment) of the Act, but also committed illegal activities that have adversely affected the quiet enjoyment, security and safety of another occupant. The Landlord confirmed that the Tenant paid for use and occupancy of the rental unit until the end of September 2018.

Tenant's Evidence:

The Tenant testified that he received the Notice on July 30, 2018.

The Tenant stated he did not receive a warning letter from the Landlord.

The Tenant admitted that he was arrested, went to court on August 14, 2018 and is currently charged with criminal harassment of his female neighbour.

The Tenant stated that he was friends with his female neighbour, would never hurt her, has been staying away from her and has been abiding by all of his criminal conditions. He said that he would like to stay in the rental unit.

Analysis

The Landlord has served the Notice on the Tenant based on Sections 47(1)(d) and 47(1)(e) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant's actions significantly interfered with or unreasonably disturbed another occupant, or seriously jeopardized the health and safety or a lawful right of another occupant. Furthermore, in relation to Section 47(1)(e), that the activities of the Tenant adversely affected the quiet enjoyment, security safety, or physical well being of another occupant and these actions were illegal. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the Notice are valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I will focus on Section 47(1)(e)(ii) of the Act that states that a Landlord may end a tenancy by giving Notice if the Tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security and safety of another occupant of the residential property.

I accept the Landlord's undisputed evidence that, as a result of the Tenant's actions, the female neighbour of the Tenant's was upset and scared; that the Tenant was arrested and criminally charged with criminal harassment of his female neighbour; and that the alleged illegal actions of the Tenant occurred on the residential property where the Tenant resides and, that the Tenant's female neighbour is also another tenant in the same residential property.

I also accept the Tenant's affirmed testimony that he had been friends with his female neighbour and that he was upset when she told him that she didn't want to see him anymore. The Tenant confirmed that he had been arrested for criminally harassing his neighbour and had current conditions not to contact her directly or indirectly.

Based on the above evidence from both parties, I find that the Landlord has met the burden of proof that the illegal activities of criminal harassment occurred within the residential property, to another tenant within the property and were as a result of the Tenant's actions. Furthermore, I find that the Tenant, on a balance of probabilities, has engaged in the illegal activity of criminal harassment and has adversely affected the quiet enjoyment, security and safety of his female neighbour, contrary to Section 47(1)(e)(ii) of the Act.

I find that the Notice was in the correct form and provided the Tenant with the information he required to either vacate the rental unit or dispute the Notice.

After considering the evidence provided and the above findings, I find that the Tenant failed to provide sufficient evidence to justify canceling the Notice, therefore, I dismiss the Tenant's Application without leave to reapply. As a result, and in accordance with Section 55 of the Act, I issue an Order of Possession for the rental unit, to the Landlord, and order the Tenant to provide vacant possession of the rental unit on or before September 30, 2018 at 1:00 p.m.

Conclusion

I dismiss the Tenant's Application without leave to reapply.

Pursuant to Section 55 of the Act, I am granting the Landlord an Order of Possession to be effective on September 30, 2018 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 12, 2018

Residential Tenancy Branch