



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALAWARE HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This matter dealt with an application by the Tenants for more time to make the application and to cancel a One Month Notice to End Tenancy for Cause.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on or about July 27, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package, but it was not served in accordance with s. 89 of the Act. The Landlord said he is not disputing service of the documents because he understands the Tenants situation. Service of documents is accepted. .

Issues(s) to be Decided

1. Are the Tenants entitled to more time to make the application?
2. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on April 1, 2015 as a month to month tenancy. Rent is \$980.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$450.00 at the start of the tenancy. The Tenant said a move in condition inspection report was completed.

With regard to the Tenants’ application for more time the Landlord said he is not disputing any delay if there was one. The Tenant made application on July 9, 2018 to Service BC which is within the time lines for disputing a 1 Month Notice to End Tenancy for Cause. There were corrections to the application which were not completed until July 17, 2018 which is after the time limit to dispute a One Month Notice to End Tenancy for Cause. I grant the Tenants more time to make the application.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 1, 2018 by posting it on the door of the Tenants' rental unit on July 1, 2018. The Effective Vacancy Date on the Notice is July 31, 2018. The Landlord said this is a difficult situation and he understands the Tenants issues, but the situation is dangerous and unsafe for other tenants in the rental complex. The Landlord said the female Tenant is throwing glass out of her window into the stairwell. This is dangerous and the broken glass has injured two other occupants. The Landlord said he believes the female Tenant has thrown glass into the stair well up to 15 to 20 times. Further the Landlord said he has given the Tenants two written warnings and a number of verbal warnings about the glass throwing. The Landlord said that after his last written warning in April or May, 2018 the female Tenant again threw glass into the stair well from her bedroom window in June, 2018. The Landlord said the owners and he have agreed this was the final incident and they agreed to issue a One Month Notice to End Tenancy for Cause to end the tenancy.

The Tenant said that the Landlord has been working with them and the glass throwing by the female Tenant is correct. Although the male Tenant said he believes it has only happened 8 to 10 times and the two injuries were from over 9 months ago. The Tenant continued to say that the Landlord has given them warnings, although he was not sure about how many were in writing and how many verbally. The Tenant said the last glass throwing incident was in June, 2018 when he was away and no one was around to help the female Tenant. Since that incident the Tenant said he has removed all glass and breakables from the rental unit so the female Tenant cannot throw glass into the stairwell any more. The male Tenant said this should solve the problem.

The male Tenant continued to explain that he is a good tenant and has contributed to the rental community and helped the Landlord on many occasions. The Tenant said that it appears that the female Tenant is causing the issues which have resulted in the eviction notice.

The parties were offered an opportunity for a mediated settlement but the Landlord said he has instructions from the owners to end the tenancy.

The Tenant said he thought the owners were not the ones who wanted to end the tenancy but were just following the Landlord's actions.

The Landlord said he has the authority to issue Notices to End Tenancy and he wants to end the tenancy because of the danger and safety risks to other occupants of the rental complex.

The Tenant said he understands and if he is not successful in canceling the Notice he is requesting the tenancy continue another 30 days so he can find alternative accommodations.

The Landlord said if the Notice to End Tenancy is upheld he is requesting an Order of Possession for October 15, 2018.

The Tenant said in closing that he has been a good tenant and this is a very difficult situation as he and his partner may be homeless if they are evicted. The Tenant said if he is not successful in canceling the Notice to End Tenancy, October 15, 2018 will work for them.

The Landlord said in closing he understands the Tenants situation and he is willing to work with them to find alternative housing if the tenancy ends. .

Analysis

There was little hard evidence submitted to support the parties' claims, so I will rely on the testimony from both parties to review the facts of the situation. Both parties agree that the female Tenant has thrown glass into the stairwell from her bedroom window. This has resulted in broken glass on the stairs and two occupants have been injured. The parties also agree a warning was given to the female Tenant in April or May, 2018 and another glass throwing incident happened in June, 2018.

Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reason for the Notice to End Tenancy, of throwing glass and breaking it in the stairwell of the common space has reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. Consequently, I dismiss the Tenants' application to cancel the One Month Notice for Cause dated July 1, 2018.

I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's One Month Notice to End Tenancy for Cause dated July 1, 2018 stands in full effect. Further, I find pursuant to s. 55(2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect October 15, 2018, after service of it on the Tenants.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective October 15, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced in 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 10, 2018

Residential Tenancy Branch