



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the Act").

The landlord's agents and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The property manager (the landlord) indicated that she would be the primary speaker for the landlord. The tenant's advocate also attended the hearing to assist the tenant with their submissions.

While I have turned my mind to all the documentary evidence and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was left with an agent of the landlord on July 24, 2018. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The tenant confirmed that they did not submit any evidence.

The landlord testified that their evidence was sent to the tenant by way of registered mail and provided copies of Canada Post tracking numbers to confirm two separate mailings of evidence to the tenant. The tenant stated that they did not receive any evidence from the landlord but indicated that they were willing to proceed with the hearing without the landlord's evidence before them.

The tenant testified that the One Month Notice was posted to their door and that they received it on July 13, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the One Month Notice on July 13, 2018.

Issue(s) to be Decided

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

Background and Evidence

Written evidence was provided that that this tenancy commenced on June 26, 2015, with a monthly rent of \$375.00, due on the first day of each month. The landlord confirmed that they continue to retain a security deposit in the amount of \$375.00.

A copy of the signed One Month Notice dated July 13, 2018, was entered into evidence by the landlord. In the One Month Notice, requiring the tenant to end this tenancy by August 31, 2018, the landlord cited the following reasons for the issuance of the One Month Notice:

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 testified that they have video evidence of the tenant physically assaulting another occupant and that they had submitted a series of still pictures of that video in their evidence. The landlord described the series of still pictures as the tenant acting in an aggressive manner in the first picture, the aggressiveness increasing in the second still picture, the tenant moving forward and pushing up against the occupant in the third picture with the occupant just putting up an arm to defend herself and then the tenant physically pushing the occupant down in the next two still pictures. The landlord's other agents who attended the hearing confirmed that they had each seen the video and confirmed the landlord's testimony of what is contained in the pictures.

The landlord submitted that the occupant, who the tenant pushed to the ground, suffered a broken pelvis and now requires special care to complete daily activities.

The tenant admitted that he pushed the other occupant and stated that the occupant was being emotionally abusive to the tenant and had been emotionally abusive to him in the past. The tenant stated that he was already upset about something and was trying to talk to staff when the other occupant interjected herself into the tenant's conversation

uninvited. The tenant testified that he did not push the other occupant with the intent to injure.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on July 23, 2018, and since I have found that the One Month Notice was served to the tenant on July 23, 2018, I find that the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*. I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

I have reviewed the affirmed testimony of all parties and I find that it is undisputed that the tenant has significantly interfered with and unreasonably disturbed another occupant as well as seriously jeopardized the health of that same occupant.

I find that it is undisputed that the tenant physically assaulted another occupant, whether they intended to injure that occupant or not, and that it was the tenant's actions that seriously jeopardized the health of the occupant as it is undisputed that the occupant suffered injuries as a result of the tenant's actions. Whether the occupant was emotionally abusive or not, I find that there is no evidence or testimony that the occupant made any attempt to physically interfere with the tenant in an aggressive manner which would require the tenant to defend their self in the manner that they did. As the tenant testified, the occupant was only talking to the tenant in a manner that the tenant did not like which led to the tenant pushing the occupant to the ground and causing injury to the occupant.

For the above reasons I find the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. Therefore, the Application to set aside the One Month Notice is 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 the landlord an order of possession as long as the notice to end tenancy complies

with section 52 of the *Act*. I find that the One Month Notice is in compliance with section 52 of the *Act*.

For these reasons, I grant a two day Order of Possession to the landlord.

As the landlord confirmed that the tenant paid the monthly rent for September 2018, the landlord is at liberty to enforce the Order of Possession right away and refund any unused portion of September 2018 rent or to allow the tenant to stay until the end of September 2018.

Conclusion

I dismiss the Application to cancel the landlord's One Month Notice dated July 13, 2018, without leave to reapply.

I grant an Order of Possession to the landlord **effective two days after service of this Order** on the tenant. Should the tenant(s) 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.

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