



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for this application.

Three agents for the Landlord (the “Landlord”) were present for the teleconference hearing, as was one of the Tenants. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenants. The Tenant confirmed receipt of a copy of the Landlord’s evidence package. The Tenant submitted the One Month Notice into evidence. I find that the Notice of Dispute Resolution Proceeding package and the Landlord’s evidence were served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on November 1, 1998. A security deposit of \$365.00 was paid at the outset of the tenancy. Current monthly rent is \$1,034.00, due on the first day of each month. The tenancy agreement was submitted into evidence, and confirms some of the tenancy details.

On September 28, 2018, the Landlord served the Tenants in person with a One Month Notice. The Tenant confirmed receipt of the One Month Notice on September 28, 2018 and applied to dispute the notice on October 5, 2018.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant

The effective end of tenancy date of the One Month Notice was stated as October 31, 2018. Further details on the One Month Notice were as follows: 'Violent behaviour'.

The Landlord provided testimony that the Tenant, K.R., who was not present at the hearing, has been involved in incidents that have caused concern for the safety and security of the staff at the rental building. The Landlord submitted the following as documentary evidence regarding the incidents that occurred:

- An incident report dated October 5, 2018, signed by an agent of the Landlord. The report states that beginning in late August and early September 2018, there were reports regarding the Tenant K.R. being verbally aggressive, as well as swinging golf clubs outside; hitting garbage cans and light stands. The report further notes that people in the building had reported erratic behaviour of the Tenant in the elevator and in the laundry room. The report states that on September 24, 2018, the agent was advised by a maintenance worker of an incident in which the Tenant brought a switchblade knife into the work room, and opened it in close proximity to the staff present.
- An incident report, dated October 2, 2018, from a staff member of the rental building. The report notes that on September 20, 2018, the Tenant showed this staff member a switchblade knife. The staff member also notes that he was

aware of the incident in the work room that occurred the same day, when the Tenant opened the knife in front of other staff members.

- A letter dated October 2, 2018 from the property manager, confirming that he served the Tenants with the One Month Notice on September 28, 2018. The letter further states that the Tenant A.G. had asked if any consideration could be given instead of an eviction notice due to the mental condition of the Tenant K.R.
- An undated letter, received by the Landlord October 2, 2018, from the Tenant A.G. The letter states that Tenant K.R. experienced a recent decline in health and behaviour and that these issues were being addressed with the support of A.G. The letter asks for the One Month Notice to be reconsidered as the situation will be managed in the future.
- A note dated October 3, 2018, from the property manager regarding a phone call with Tenant, A.G. that took place on October 2, 2018. The note states that A.G. advised the manager that the behaviour of Tenant K.R. was improving and noted an incident where Tenant K.R. had become agitated in the elevator.
- Documentary information stating that a knife is illegal when used to intimidate others, and that knives with blades that open automatically are prohibited in Canada.

The Tenant provided testimony that he was unsure of the reasons for the One Month Notice when served with the notice. When he asked the Landlord for clarification, this information was not provided to him. The Tenant stated that he was willing to work with the Landlord and his co-tenant, but this was difficult when he did not know what occurred.

The Tenant stated that his co-tenant has never had a switchblade. He also stated that there is no evidence of any violent incidences. The Tenant testified that on the day of the incident, an agent for the Landlord came to the door of their rental unit to note his concern. The Tenant stated that he took the knife away from his co-tenant and removed it from the apartment. He noted during the hearing that his co-tenant had an antique knife that he wanted to show people, and that he had not been violent with the knife.

The Tenant questioned the Landlord as to whether they were witness to the events that took place, or if they were reporting based on hearsay from others.

The Landlord stated that they had a direct witness statement from the agent who was present in the office when the Tenant showed him the knife. They stated that some of the staff members present in the work room were not comfortable talking about the incident or writing a witness statement due to the trauma experienced from the incident.

The Landlord testified as to their belief that the incident with the Tenant showing the knife on two occasions was violent.

The Tenant further testified that these are not issues of violence, but instead are mental health issues. The Landlord stated that they are concerned for the safety of their staff members and others in the rental building. They further stated that dealing with these concerns are beyond what a landlord should be responsible for and they would like an Order of Possession.

The parties were provided with an opportunity to discuss settlement, but were not able to come to an agreement.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenants received the One Month Notice on September 28, 2018, and applied to dispute the notice on October 5, 2018, I find that they applied within the time allowable under the *Act*. Therefore, the issue before me is determining whether the reasons for the One Month Notice are valid.

I note that in accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove that the reasons for the notice are valid.

The One Month Notice stated two reasons for ending the tenancy:

1. That the tenant or guest has seriously jeopardized the health, safety or lawful right of another occupant or the landlord, pursuant to Section 47(1)(d)(ii) of the *Act*.
2. That the tenant or guest has engaged in illegal activity that has affected the quiet enjoyment, security, safety or physical well-being of another occupant, pursuant to Section 47(1)(e)(ii) of the *Act*.

Regarding the first reason for the One Month Notice, I accept the evidence of the Landlord of incident reports and letters that establish the events that occurred on September 20, 2018, when the Tenant K.R. had a knife on the residential property. Both parties were in agreement that the Tenant had a knife.

However, as the Landlord is claiming that the knife led to seriously jeopardizing the health, safety or security of other occupants of the building, I look to the Landlord's documentary evidence to establish their claim. When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit evidence to support their testimony over and above their verbal testimony.

The Landlord submitted one direct statement from a staff member who was present on September 20, 2018. The incident report states in part the following:

'On Thursday, September 20, (the Tenant K.R.) came into the office to show me a switchblade that he had just acquired, telling me that he was going to restore the wood grain handle to its original luster.' (Reproduced as written)

The remainder of the incident reports and letters regarding the Tenant entering the staff work room in the building with a knife are from staff members who were not present when the incident occurred. The Landlord stated that those present were not comfortable writing about the incident due to the seriousness and trauma of what occurred.

However, without sufficient documentary or other evidence establishing what occurred, I find it difficult to determine whether the Tenant was threatening or intimidating others with the knife.

I do find that carrying a knife in the rental building and showing it to others is not reasonable behaviour and do understand the concern this caused for those present.

However, I note that the ground for the One Month Notice states that this behavior has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I do not find that I have sufficient evidence to establish that the events that took place on September 20, 2018 *seriously* impacted the health, safety, or lawful right of others in the building due to the dispute between the parties regarding what occurred. Therefore, I find that the Landlord has not met the burden of proof on the first ground of the One Month Notice.

As for the illegal activity, I do not find sufficient evidence before me to establish that the Tenant engaged in illegal activity. The Landlord referenced the Tenant causing disturbance on the street through hitting things with a golf club and noted police involvement. However, the Landlord did not submit sufficient documentary evidence or witness testimonies to establish this claim.

The parties were not in agreement as to the type of knife that Tenant K.R. had, and whether he was showing it to others or using it in a manner that was threatening or intimidating. The Landlord submitted documentary information into evidence stating that intimidation with a knife may be illegal, as is a knife in which the blade automatically opens. However, I do not find sufficient evidence to prove that the knife in question was a switchblade or similar knife, or that it was being used in a manner intended to intimidate or threaten.

Therefore, I find that the Landlord has not met the burden of proof to establish the second ground for ending the tenancy on the One Month Notice.

Based on the above analysis, I am not satisfied, on a balance of probabilities, that the Landlord had cause to end the tenancy under Section 47 of the *Act*. Therefore, the One Month Notice dated September 28, 2018, is hereby cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenants were successful with their Application for Dispute Resolution, I award the recovery of the filing fee, pursuant to Section 72 of the *Act*. The Tenants may deduct \$100.00 one time from their next monthly rent payment.

Conclusion

The One Month Notice dated September 28, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenants may deduct \$100.00 one time from their next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: November 13, 2018

Residential Tenancy Branch