



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEIGHBORHOOD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on October 19, 2018. The landlord's agent (the landlord) stated that the tenant was served with the submitted documentary evidence via Canada Post Registered Mail on November 14, 2018 to the address provided on the tenant's application for dispute. The tenant stated that he did not receive the package. The landlord provided a Canada Post Customer Receipt Tracking number which confirms that the package was served properly. Both parties consented to the Arbitrator reviewing the number on the Canada Post Website for online tracking. The review showed that Canada Post received the package on November 14, 2018 and that although there were possible delivery delay issues due to labour disruption, Canada Post reported that an attempted service was made and notice card was left to pick up the package on November 16, 2018 and a second attempt at service was made and that a Final Notice was left to pick up the package on November 22, 2018. The tenant stated that he did not receive the notice(s) and also stressed that he does not have valid identification to claim the package. I accept the undisputed affirmed evidence of both parties and find that the landlord was properly served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail and is deemed served as per section 90 of the Act. As for the landlord's documentary evidence submission, I find that the tenant was properly served as per sections 89 of the Act. Although the tenant stated that he was not served with the documentary evidence, I find that the landlord used the mailing address provided by the tenant for

service of documents and has complied with sections 89 of the Act. The tenant also stated that because he did not have valid identification, that he was also unable to claim the package. The tenant failed to provide an explanation of why he did not provide an alternative form of service to the landlord to receive documentation for the hearing. The tenant is deemed served with the landlord's documentary evidence as per section 90 of the Act. Where possible during the hearing, the contents of the landlord's evidence when referred to would be described in detail to the tenant to allow him a proper response to the evidence.

The tenant and his advocate requested an adjournment to obtain the landlord's submitted documentary evidence. The landlord opposed the adjournment request stating that the situation with the tenant has escalated and that a delay would prejudice the landlord and effect the safety/security of the landlord's agents. Both parties made submissions on the merits of an adjournment. I find in reviewing the circumstances that a delay of the hearing by adjourning would prejudice the landlord and outweigh any benefits to the tenant. The landlord's documentary evidence although crucial to the dispute, was properly served to the tenant using the mailing address provided by the tenant. The tenant further clarified that he did not have valid identification to pick up the package from Canada Post, but made no alternative arrangements with the landlord to receive the landlord's submissions. On this basis, the tenant's request for an adjournment is denied and the hearing shall proceed.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 6, 2017 on a fixed term of 3 months until May 31, 2017 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 6, 2017. The monthly rent began as \$375.00 payable on the 1st day of each month. No security or pet damage deposits were paid.

Both parties confirmed that on October 17, 2018, the landlord served the tenant with the 1 Month Notice dated October 16, 2018 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of November 30, 2018 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The details of cause provided by the tenant state:

and got injured. The staff was then sent to hospital by ambulance.

The details of cause provided on the landlord's submitted copy state:

The tenant verbally argued with the landlord's staff, and subsequently physically assaulted the staff, causing the staff fell on the floor and got injured. The staff was then sent to hospital by ambulance.

The hearing proceed after review of the documents as both parties confirmed that the details of cause listed are as listed on the landlord's copy of the 1 month notice.

The tenant has provided written details arguing, "the landlord is making a wrongful accusation".

The landlord claims that the tenant assaulted the landlord's agent who is a custodian. The landlord claims that the tenant assaulted the landlord's agent while he was conducting his duties mopping the elevator area. The landlord's witness, M.C. provided undisputed affirmed testimony during the hearing that he had entered the elevator after the tenant and was told by the tenant, "you are not going to ride with me". The witness stated that the tenant then pushed him a couple of times to force him out of the elevator. The witness stated that he fell as a result of being pushed and was taken to the hospital via ambulance. The witness stated that he was injured as a result after being examined by a Doctor. The landlord has presented video and still photographs confirming the witness's account of the incident.

The landlord also stated that the tenant violated a settlement agreement made on June 22, 2018 in which the tenant agreed to "stop negative behaviour."

The landlord has submitted in support of the details of cause listed on the 1 month notice dated October 16, 2018:

- Multiple copies of video recordings of the incident from the elevator and courtyard views.
- A copy of a physician's report detailing the staff member, M.C.'s injuries from the incident.

- A copy of WorkSafeBC letter dated October 18, 2018, detailing a claim for an injury sustained at the workplace.
- Copy of Residential Tenancy Branch Decision dated June 22, 2018 (listed on cover page) re: Settlement Agreement as a result of a previous Tenant's Application (CNC).

The tenant with the assistance of his advocate, disputes the landlord's claims in that the witness broke a settlement agreement as a result of a dispute hearing on June 22, 2018 which states in part,

Settlement Terms

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

- 1. Both parties agreed that this tenancy will continue under the terms of the original tenancy agreement until it is ended in the accordance with the Act;*
- 2. The landlord agreed that its 1 Month Notice, dated May 8, 2018, is cancelled and of no force or effect;*
- 3. **The tenant agreed to stop all negative behaviour towards the landlord's staff members including the custodian;***
 - a. **Both parties defined "negative behaviour" as threats, racial slurs, verbal abuse and physical abuse;***
- 4. Both parties agreed to work with a neutral third party who can mediate any future problems between the parties regarding this tenancy, on the following terms;*
 - a. By June 30, 2018, the tenant's advocate will notify the landlord of the name and contact information for the neutral third party selected by the tenant ("designated third party");*
 - b. The landlord agreed to notify the designated third party if there are any future tenancy issues involving the tenant, after which the designated third party will speak to both the landlord and tenant regarding the issues and provide suggestions to both parties to resolve the issues;*

- c. If the issues are not resolved between the parties, the landlord is free to pursue its legal rights at the Residential Tenancy Branch and issue warning letters to the tenant regarding these issues;*
- 5. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing.*

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

The landlord claims that the tenant has failed to abide by condition #3 of the Settlement Agreement.

The tenant argued that the altercation was instigated by the landlord's agent/the witness.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed evidence of both parties that the landlord served the tenant with the 1 month notice by posting it to the rental unit door on October 17, 2018. Both parties confirmed the contents and details of the 1 month notice. As such, I find that the tenant was properly served with the 1 month notice dated October 16, 2018.

Although the tenant has disputed the landlord's claims, the landlord has provided affirmed testimony from the witness/agent of the landlord that he was verbally assaulted and subsequently physically assaulted the landlord's staff member/agent, M.C. The landlord provided undisputed affirmed evidence that as a result, M.C. fell to the ground and suffered an injury which required him to be taken to the hospital via ambulance. The landlord stated that a criminal complaint was filed with the local police and possible charges are pending. The landlord has also submitted in support of this claim video documented from the interior view of the elevator and a second view from the courtyard. The landlord provided time stamps of the altercation which was reviewed. During the hearing the review of the video footage was detailed to the tenant. The tenant claimed that M.C. had attacked him with a mop by placing the mop in his feet. The tenant stated

that his shoes were very “muddy” when he entered the elevator and was later found to be clean. A further review of the 3 different videos and the still photographs provided by the landlord do not corroborate the tenant’s claim that he was attacked by M.C. As such, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant in that the tenant had “pushed” M.C. out of the elevator which resulted in M.C. falling and suffering an injury. The landlord has provided sufficient evidence to justify the reason for cause listed on the 1 month notice dated October 16, 2018. The tenant’s application to cancel the 1 month notice dated October 16, 2018 is dismissed.

As the 1 month notice is upheld, pursuant to section 55 of the Act, the landlord is granted an order of possession for the effective end of tenancy date of November 30, 2018.

Conclusion

The tenant’s application is dismissed.

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 27, 2018

Residential Tenancy Branch