



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nanaimo FOS Non Profit Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MT CNC LRE AS**

Introduction

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

- An order for more time to apply to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice") under section 66(1);
- Cancellation of the One Month Notice under section 47;
- An order to suspend or restrict the landlord's right of entry under section 70; and
- An order to allow an assignment or sublet when permission has been unreasonably withheld under section 65.

The landlord appeared through its agents RM and LR. The tenant appeared with his mother KM and sister JM.

Both parties had a full opportunity to call witnesses, present affirmed evidence, make submissions and cross examine the other party.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenant. No issues of service were raised. The tenant acknowledged receipt of the landlord's materials. Accordingly, I find the landlord was duly served pursuant to section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a One Month Notice issued by a landlord, I must consider

if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a One Month Notice in compliance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for more time to apply to cancel a One Month Notice to End Tenancy for Cause (“One Month Notice”) under section 66(1);
- Cancellation of the One Month Notice under section 47;
- An order to suspend or restrict the landlord’s right of entry under section 70;
- An order to allow an assignment or sublet when permission has been unreasonably withheld under section 65.

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 oral and documentary submissions are reproduced here.

The landlord testified the tenancy started on October 1, 2013 and is ongoing. Rent is \$491.00 monthly payable on the first of the month. The tenant provided a security deposit in the amount of \$245.50 which the landlord holds.

The landlord testified that on September 25, 2018, the tenant began to display evidence of drug use. The landlord observed onset of increasing paranoid behaviour, erratic conduct, destruction of the landlord’s property, periodic screaming or crying, and aggressive behaviour toward other occupants of the building in which the unit was located. The landlord testified to efforts to restrain the tenant and to obtain his consent to attend treatment or detox, all of which the tenant refused. The landlord called the police on September 25, 2018. The police took the tenant into custody; the tenant was a patient in the local hospital for the following 30 days.

The landlord testified they posted the One Month Notice to the tenant’s door on October 25, 2018 thereby effecting service three days later on October 28, 2018, pursuant to section 90 of the *Act*. The tenant acknowledged receipt of the One Month Notice but is unsure of the date of receipt. The Notice stated the grounds for issuance as follows:

1. The tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant

The landlord primarily provided testimony and evidence with respect to the first ground in the One Month Notice. The landlord testified the tenant's behaviour was extremely disturbing for the landlord's staff and the other tenants. The occupants were afraid of attack by the tenant. The tenant's behaviour worsened and became increasingly violent and unpredictable.

The tenant acknowledged he was using "meth" beginning September 25, 2018 and ending with his hospitalization on September 30, 2018. The tenant testified he was unable to dispute the One Month Notice until November 6, 2018 when he filed an Application for Dispute Resolution.

The tenant requests more time to file an application to cancel the One Month Notice.

The tenant states that his mental illness and addiction are now under control and he has been "clean and sober" since he was admitted to the hospital on September 25, 2018. The tenant submitted no medical evidence and called no witnesses. The tenant's testimony was that he had a counsellor who was not available for the hearing. The landlord stated that the tenant refused all efforts to support him with treatment and detox; the landlord is not confident the tenant will not relapse.

The landlord requests an order of possession.

Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

I find the One Month Notice complies with section 52 of the *Act*. I find the landlord served the One Month Notice on October 28, 2018.

Section 47 of the *Act* provides that upon receipt of the One Month Notice, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. However, pursuant to section 66(1) of the *Act*, I grant the tenant's application to extend the time in which to file an Application for Dispute Resolution due to the extraordinary circumstances of his hospitalization. I accept the tenant's late filing of the Application.

While the landlord alleged multiple grounds for the issuance of the One Month Notice, during the hearing, the landlord submitted evidence primarily with respect to one ground only, namely:

- The tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the One Month Notice. In the matter at hand, the landlord must demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant (that is, the occupants of building in which the unit is located).

The landlord gave evidence of repeated warnings to the tenant beginning with the onset of his behavior change and drug use on September 25, 2018. The landlord repeatedly offered assistance to the tenant to obtain appropriate treatment, including during his hospitalization. The tenant rejected all the landlord's efforts.

Considering the documentary and oral evidence, I find the landlord has established on a balance of probabilities that the tenant has significantly interfered with and unreasonably disturbed the other occupants in the building.

I therefore dismiss the tenant's application to cancel the One Month Notice without leave to reapply.

The tenant submitted no evidence with respect to his applications under sections 65 and 70. Therefore, these applications are dismissed without leave to reapply.

Pursuant to section 55(1), the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenants' application is dismissed.

I therefore grant the landlord an order of possession which is effective two days after service on the tenant.

The tenant's claims are dismissed without leave to reapply.

Conclusion

I grant the landlord an order of possession which is effective two days after service on the tenant.

This order must be served on the tenant.

If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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 30, 2018

Residential Tenancy Branch