



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT HOUSING AND HEALTH SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 31, 2017 (the "Application"). The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause, dated October 19, 2018 (the "One Month Notice"), pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing in person and was assisted by M.B., a legal advocate. The Landlord was represented at the hearing by M.L. and T.H., agents. The Tenant, M.L., and T.H. each provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenant, M.B. advised that the Landlord was served with the Application package by registered mail. In addition, M.B. advised that a subsequent documentary evidence package was served on the Landlord by fax. M.L. acknowledged receipt of both packages on behalf of the Landlord.

The Landlord submitted documentary evidence in response to the Application. According to M.L., it was served on the Tenant in person. M.B. and the Tenant acknowledged receipt.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

On behalf of the Landlord, M.L. testified the Tenant lives in supported housing. Assistance includes help with medical, financial, and emotional needs if requested. The parties agreed the tenancy began on September 1, 2016. The Tenant pays a subsidized rate of \$375.00 per month, which is due on the first day of each month. The Tenant paid a security deposit of \$250.00, which the Landlord holds.

The Landlord wishes to end the tenancy due to an alleged assault that took place at the Tenant's rental unit on October 13, 2018. As a result of the incident, the Landlord issued the One Month Notice on the following bases:

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 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.

M.L. referred to an Incident Report that was submitted into evidence by the Landlord. It describes an incident during which the Tenant threatened to punch staff who had attended his room to conduct a "wellness check". M.L. was present during the incident. According to the report, the Tenant started yelling and threw a set of keys at D.E., a casual staff person. The keys struck D.E. in the face. The report confirms that police attended the residence and the Tenant was "taken to jail with charges."

On behalf of the Landlord, M.L. testified the assault was contrary to a crime free addendum, signed by the Tenant. A copy of the crime free addendum was submitted into evidence. In it, the Tenant agreed not to engage in any criminal activity, including assault or alleged assault, and that a single occurrence would be sufficient to end the tenancy.

Further, the Landlord submitted an Undertaking Given to a Justice or a Judge, highlighting the significance of the event described by M.L. In it, the Tenant undertook to comply with 5 conditions, including that he would not attend the rental property other than on one occasion to collect his belongings, or have any contact with D.E. In reply, the Tenant advised that his lawyer will be seeking to have conditions removed at his next court appearance on December 10, 2018.

In reply, the Tenant denied an assault occurred as he did not intend to harm D.E. The Tenant's advocate, M.B., questioned M.L. about a tenant's right to reasonable privacy and suggested the correct procedure for conducting a wellness check was not followed.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to end a tenancy for cause in the circumstances described therein. In this case, the One Month Notice was issued on the bases that the 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., or 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.

In this case, I find it is more likely than not that the Tenant assaulted D.E., an employee and agent of the Landlord, as alleged by M.L. The Tenant suggested he did not assault D.E. because he did not intend to harm her. However, I find the Tenant's actions seriously jeopardized the health or safety or lawful right of D.E., an employee/agent of the Landlord. Therefore, I find the Tenant's Application to cancel the One Month Notice is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the One Month Notice, submitted into evidence by the Tenant, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Conclusion

Pursuant to section 55(1) of the Act, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in 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: December 7, 2018

Residential Tenancy Branch