



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA KINSMEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, LRE, RP

Introduction

On November 13, 2018, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause, (the “Notice”) issued on October 30, 2018, for an order for the Landlord to make emergency repairs to the rental unit, for an order for the Landlord to make regular repairs to the rental unit, and to suspend or set conditions on the Landlord’s right to enter the rental unit. The matter was set for a conference call.

The Landlord, represented by two Property Managers, the Tenant, the Tenant’s Social Worker and two witnesses for the Tenant attended the hearing, and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

Preliminary Matters- Related Issues

I have reviewed the Tenant's application, and I note that the Tenant has applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order for the Landlord to make emergency repairs to the rental unit, for an order for the Landlord to make regular repairs to the rental unit, and to suspend or set conditions on the Landlord's right to enter the rental unit.

I will proceed with this hearing on the Tenant's claim to cancel the One-Month Notice.

Issues to be Decided

- Should the Notice issued on November 13, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement into documentary evidence. The tenancy agreement shows that the tenancy, for this rental unit, began on September 1, 2017, as a six-month fixed term tenancy, that rolled into a month to month at the end of the fixed term.

The Landlord testified that she served the Notice to end tenancy to the Tenant on October 30, 2018, by personally serving it to the Tenant. The Property Manager provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- 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.*
 - *Put the landlord's property at significant risk.*
- *Tenant or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:*
 - *Damage the landlord's property.*
- *Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site property/park.*
- *Tenant has not done required repairs of damage to the unit/site.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The Notice states that the Tenant must move out of the rental unit by November 30, 2018. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

Property Manager #1 testified that she and Property Manager #2 attended the rental unit on October 24, 2018, to conduct an inspection. Property Manager #1 testified that during this inspection, while in the Tenant's bedroom, the Tenant assaulted her. Property Manager #1 testified that the Tenant had become upset that she had been taking pictures of the rental unit and that per personal property would be depicted in the photos that were being taken. Property Manager #1 testified that she informed the Tenant that as agent for the Landlord she had the right to take pictures of the rental property during an inspection and that the Tenant could move any of her possession out of the way if she wished. Property Manager #1 testified that the Tenant became very upset at this and jumped on her back, assaulting her in an attempted to physically stop her from taking pictures. Property Manager #1 testified that had Property Manager #2 had been in attendance during the assault and was able to talk the Tenant into letting go of her and was able to call out to a social worker who was downstairs at the time of the assault to come up to the bedroom to help control the Tenant.

Property Manager #2 testified that she had been in attendance at the rental unit on October 24, 2018, to assist in conducting the inspection. Property Manager #2 testified that she was taking the written notes, and Property Manager #1 was taking the pictures of the rental unit for the inspection. Property Manager #2 testified that while inspecting the Tenant's bedroom, she witnessed the Tenant assault Property Manager #1. Property Manager #2 testified that the Tenant jumped on Property Manager #1 and was

physically assaulting her in an attempt to prevent Property Manager #1 from taking pictures. Property Manager #2 testified that when the assault began, she called out to the Social Worker who was downstairs at the time of the assault, for help. Property Manager #2 testified that she was eventually able to talk the Tenant into letting go of Property Manager #1.

The Tenant testified that she was unhappy that the Property Manager was taking pictures during the inspection as she did not feel that she had the right to take pictures of her personal property. When asked the Tenant stated that she had been given the opportunity to move anything of a personal nature out of the area while the Property Managers took pictures of the rental unit, but that she had not taken that opportunity. The Tenant testified that she believed that the Landlord did not have the right to take pictures.

The Tenant testified that she did not assault Property Manager #1 during the inspection.

Property Manager #1 testified that she informed the Board, that runs the rental property, of the assault and that the Board had ordered her to end the Tenant's tenancy due to the assault. Property Manager #1 also testified that she filed a complaint with the local police department regarding the assault and submitted the police file number into documentary evidence.

Analysis

I acknowledge that there were many issues brought forth related to the Tenant during the hearing. Although I have reviewed all of the evidence and testimony submitted during the hearing, only the evidence and testimony relevant to the issue and my finding in this matter are described in this decision.

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

I find that the Tenant received the Notice to End Tenancy on October 30, 2018. Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenant had until November 9, 2018, to file her application to dispute this Notice. I have reviewed the Tenant application for dispute resolution, and I find that the Tenant filed her application on December 9, 2018, within the legislated timeline.

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case. I find the testimony of the two Property Managers and their account of the assault that took place in the rental unit on October 24, 2018, to be credible. I find that the Tenant actions, on October 24, 2018, seriously jeopardized the safety of the Landlord's agent.

For the reason stated above, I find that the Tenant has seriously jeopardized the safety and the lawful rights of the Landlord. Therefore, I dismiss the Tenant's application to cancel the Notice issued on October 30, 2018. I find the Notice issued October 30, 2018, is valid and enforceable.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant's application to dispute the Notice was dismissed.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlord an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant 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: January 4, 2019

Residential Tenancy Branch