



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHS COMMUNITY SERVICES SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant under the Residential Tenancy Act (the *Act*) for cancellation of a One Month Notice to End Tenancy for Cause (“One Month Notice”) under section 47.

The tenant appeared with his advocate, DJ (“the tenant”). The landlord’s representatives JT and AT appeared on behalf of the landlord (“the landlord”). Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord’s evidence package. Neither party raised any issues regarding service. Accordingly, I find that both parties were served in accordance with the *Act*.

Both parties were informed of Section 55 of the *Act* which requires, when a tenant submits an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause 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 notice to end tenancy in compliance with the *Act*.

Issue(s) to be Decided

The issues are as follows:

- Is the tenant entitled to cancellation of the One Month Notice under section 47?
- If the tenant is not successful in cancelling the One Month Notice, is the landlord entitled to an order of possession under section 55?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision.

The landlord testified that the parties entered into a month-to-month residential tenancy agreement starting August 12, 2016 for rent of \$375.00 per month payable on the first day of each month. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$187.50. The parties did not submit a copy of the tenancy agreement in evidence.

The landlord issued a One Month Notice dated November 15, 2018 and checked the following as grounds for the notice:

- The tenant has allowed an unreasonable number of occupants in the unit/site.
- The tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed 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 the other occupant, or,
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that they personally served the tenant with the One Month Notice on November 15, 2018. The One Month Notice contained an effective vacancy date of December 17, 2018. A copy of the One Month Notice was submitted in evidence. The tenant filed this application for dispute resolution on November 26, 2018.

The landlord testified that the tenant has a large number of daily guests. The landlord testified that in December 2017 a tally was kept of the tenant's visitors and the landlord counted 2,211 guests for the tenant during that month for an average of approximately seventy guests per day. The landlord testified that this was the regular volume of guests the tenant had throughout his tenancy. The landlord testified that the tenant even had a lineup of guests in the hallway outside his room.

The landlord testified that their building maintenance duties included the identification of guests and screening the entry of guests into the building. The landlord testified that the tenant's numerous guests placed a significant burden on the landlord because it forced the landlord to screen many more people entering the building.

In addition, the landlord testified that the tenant's guests were found throughout the building and the guests interfered with the building's dinner service. The landlord also testified that the tenant's guests were disruptive and sometimes involved in fights.

The landlord provided an anonymous note that indicated that the tenant had threatened another resident.

The landlord also testified that an incident occurred in December 2017 wherein one of the tenant's guests forced his way into the building and assaulted one of the landlord's employees. The landlord testified that this guest was extremely aggressive and he told the landlord's employees that he needed to make a drug drop for the tenant. The tenant denies any knowledge of this incident.

The landlord also testified that the police have executed three search warrants on the property against the tenant and the police damaged the property while executing the warrants. The landlord produced copies of the search warrants issued on October 24, 2018 and November 10, 2016.

The landlord testified that they believed that criminal charges were filed against the tenant following the execution of the search warrants. Further, the landlord believed that the tenant had a criminal court hearing in December 2018. The landlord also testified that the Crown counsel contacted the landlord to obtain a copy of the tenant's tenancy agreement. The landlord was unable to provide a case number or specific information regarding any criminal charges.

The tenant testified that there have been no criminal charges filed against him as a result of the search warrants and he did not have a criminal court hearing in December 2018.

The tenant testified that he has fewer guests than the landlord alleged. The tenant estimated that he only has approximately fifteen to twenty guests per day. Further, the tenant testified that only approximately five to six guests a day are personal visitors. The tenant testified that the remaining guests were visiting to receive charitable goods from

the tenant's non-profit society. The tenant testified that this organization is a registered B.C. society which provides tents, cigarettes and other supplies to needy people.

The landlord testified it was aware that the tenant was the President of a society. However, the landlord testified that they did not see the tenant operate the society within the building. Specifically, the landlord stated that they did not see any of the tenant's guests leave the building with tents or other supplies. Further, the landlord testified that they did not see anyone drop off supplies to the tenant's unit for donation.

The tenant testified that the landlord's guest policy has been previously determined to be in violation of the *Act* in a prior Residential Tenancy Branch (the RTB) dispute resolution proceeding. Further, the tenant argued that the current One Month Notice violates the previous dispute resolution order.

The landlord acknowledged the previous RTB decision. However, the landlord stated that it was not trying to enforce a guest policy against the tenant. Rather, the landlord testified that they were seeking to end this tenancy based upon the specific excessive number of the tenant's guests and the illegal activity of the tenant and his guests rather than a building wide guest policy.

The tenant provided five notes from other residents attesting to the tenant's character and good conduct. Each of these typed notes made the same declaration. Specifically, the notes each said that the tenant "...is a respectful tenant and has never disturbed me, made feel unsafe, or caused any disruptions on the floor."

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b) The tenant is repeatedly late paying rent;
- c) There are an unreasonable number of occupants in a rental unit;
- d) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;

- e) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- f) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- g) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- h) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- i) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;
- j) The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- k) The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- l) The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - i. The date the tenant receives the order;
 - ii. The date specified in the order for the tenant to comply with the order.

To dispute the One Month Notice, the tenant must file his Application for Dispute Resolution within 10 days of service of the notice pursuant to section 47(4) of the *Act*. Since the effective date of service of the One Month Notice was November 15, 2018, the tenth calendar day after the date of service was Sunday, November 25, 2018. However, since the deadline fell on a Sunday, the tenant's deadline to file an application for dispute resolution was extended to Monday, November 26, 2018. Accordingly, the tenant timely filed this application for dispute resolution by filing it on November 26, 2018.

The One Month Notice stated an effective vacancy date of December 17, 2018. However, Section 53(3) of the *Act* states that if notice to end tenancy is given for a date other than the date before the rent is due, then the effective vacancy date of the notice is corrected to that date. As rent is due on the first day of each month in this tenancy, the effective vacancy date of this One Month Notice is corrected to December 31, 2018.

The landlord's One Month Notice claimed the following basis for ending the tenancy for cause: (i) the tenant has allowed an unreasonable number of occupants in the unit/site; (ii) the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and (iii) the 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 the other occupant or jeopardize a lawful right or interest of another occupant or the landlord.

I will analyze each of these grounds for ending the tenancy separately.

Unreasonable Number Of Occupants

The landlord is seeking to end the tenancy on the basis that the tenant has an unreasonable number of occupants. Although the landlord has produced evidence that many guests have regularly visited the rental unit, a guest is not the same as an occupant. A guest is a person temporarily visiting the property whereas an occupant is a person residing there.

The landlord did not present any evidence that there were any occupants in the rental unit other than the tenant. Rather, the landlord only produced evidence showing that the tenant had many guests. Further, the landlord did not present any evidence that any of the numerous guests were also occupants. Since there is no evidence that the tenant permitted an unreasonable number of occupants at the property, the landlord's One Month Notice cannot be upheld on this basis.

Significantly Interfered With/Unreasonably Disturbed

The landlord has also requested a termination of this tenancy on the basis that the tenant's numerous guests have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord has produced significant evidence that the tenant has entertained a very large number of guests at the rental unit. However, the landlord has not provided sufficient evidence to establish, on the balance of probabilities, that the tenant's guests have significantly interfered with, or unreasonably disturbed, another occupant or the landlord. The mere fact that a large number of guests visited the property doesn't prove that they have significantly interfered with or unreasonably interfered with the other residents or the landlord.

The landlord did not produce any evidence that other residents were bothered by the tenant's guests. The only evidence the landlord provided relating to other residents was a typed note from an anonymous individual which stated that the tenant had threatened him. I did not find this evidence persuasive as the name of the declarant was redacted and there was no testimony to authenticate the note.

In addition, the note did not mention any complaints about the tenant's guests. The note merely stated that the tenant had threatened the declarant. While threatening another resident could be a legitimate basis to provide a one month notice to end a tenancy for cause, the One Month Notice in this dispute did not claim this as a basis to end the tenancy. As such, this anonymous note is not relevant to this dispute.

The landlord also argued that the large number of guests have interfered with the landlord's operations of the building. As each guest needed to be screened at the building entrance, the landlord argued that the large number of guests put a burden on the landlord's employees.

However, I am not persuaded that this constituted a significant interference or unreasonable disturbance of the landlord. It appears that the landlord was simply performing its landlord duties by opening the entry door for guests. The landlord did not provide any evidence that the tenant's guests caused the landlord to perform any additional services other than its existing landlord duties.

In addition, the landlord's guest policy violates the previous RTB decision from July 21, 2017 between the same parties. In the previous case, the tenant challenged the landlord's guest policy which had restrictions including a requirement that guests present identification; that staff could refuse entry to guests; that tenants needed to sign in guests at the front desk, that no guest under the age of 19 were permitted; that guests were restricted to limited visiting hours; that there was a restriction on the number of guests; and that there was a requirement that tenants must accompany their guests in the building.

In the previous case, the RTB Arbitrator ruled that this guest policy was a violation of Section 30 of the *Act* and Section 9 of the Residential Tenancy Regulations and the landlord was ordered to stop enforcing this guest policy. However, despite this previous ruling, the landlord is still restricting the tenant's guests and the landlord is improperly attempting to argue that the processing of the tenant's guests is burdensome to the

landlord. This argument is not persuasive since the landlord shouldn't be restricting the tenant's guests anyway pursuant to the previous ruling.

The landlord did provide evidence of a disturbing incident wherein one of the tenant's guests forced his way into the building and assaulted one of the landlord's employees. However, I do not find that this incident alone establishes that on a balance of probabilities that the tenant's guests significantly interfered with or unreasonably disturbed the landlord. This event was only a single incident and it occurred in December 2017.

In addition, the landlord's delay in pursuing this One Month Notice raises the issue of estoppel.

Estoppel is a legal principle wherein a party can waive their right to assert a legal right they might otherwise have. Estoppel arises when:

- the parties have a shared understanding;
- one party conducts itself in reliance on that understanding; and
- that party would suffer a detriment if the other party is now permitted to act inconsistent with that understanding.

In this case, although the landlord claims that the tenant had excessive guests which have significantly interfered with or unreasonably disturbed another occupant or the landlord, the landlord has let this situation persist for over a year before issuing the One Month Notice. The landlord provided a comprehensive tally of the number of tenant's guests in December 2017, but the landlord only now issues a One Month Notice based on tenant's guests.

Based upon the previous RTB decision and the landlord's inaction in pursuing this One Month Notice, I find that the parties shared an understanding that the tenant was permitted to have an unrestricted number of guests and it would be detrimental to the tenant to now terminate his tenancy based upon his reliance on this understanding.

For the above-stated reasons, I find that the landlord is estopped from now claiming, a year later, that tenant's guests justify the termination of this tenancy.

For these reasons, I find that the landlord has failed to provide sufficient evidence that the tenant's large number of guests have significantly interfered with, or unreasonably disturbed, another occupant or the landlord.

As such, the landlord's One Month Notice cannot be upheld on the basis that tenant's guests have significantly interfered with or unreasonably disturbed another occupant or the landlord.

Illegal Activity

The landlord has not produced sufficient evidence to establish that, on the balance of probabilities, the tenant has engaged in illegal activity at the property. Although the police have executed three search warrants on the property, in the absence of evidence of a subsequent criminal conviction, these search warrants do not establish that the tenant engaged in criminal activity at the property on the balance of probabilities.

Further, the landlord's attempt to infer that the tenant was engaged in criminal conduct based upon the tenant's numerous guests is not persuasive. There are many non-criminal reasons, including the tenant's testimony that he operated a non-profit society from the rental unit, that could explain why a tenant had a very large number of guests.

The landlord did provide testimony that an individual that forced his way onto the property stated that he was performing a drug drop for the tenant. This testimony does incriminate the tenant to a degree. However, on the balance of probabilities, I'm not persuaded that a single statement from an anonymous individual a year ago establishes that the tenant is engaging in illegal activity.

Further, estoppel also applies to the issue of illegal activity. The incident wherein a guest of the tenant forcibly entered the property and assaulted one of the landlord's representatives happened in December 2017. The lengthy delay in pursuing a One Month Notice a year later raises the issue of estoppel.

I find that the parties shared an understanding that this incident was resolved a year ago and that the tenant has continued hosting guests on reliance of that understanding. I find that landlord has not diligently pursued their concerns regarding this tenancy and that it would be detrimental to now end this tenancy a year later based upon this dated event.

In the absence of evidence that the tenant engaged in criminal activity, the One Month Notice cannot be upheld on this basis.

For the forgoing reasons, grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

Conclusion

I grant the tenant's application to cancel the One Month Notice.

The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

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 21, 2019

Residential Tenancy Branch