



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated November 26, 2018 ("1 Month Notice"), pursuant to section 47.

The landlord, the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 89 minutes.

"Witness KS" testified on behalf of the landlord and "witness IM" testified on behalf of the tenant. Both witnesses were affirmed under oath. Both parties had equal opportunities to question both witnesses. The landlord intended to call three other witnesses, who were excluded from the outset of the hearing. At the end of the hearing, the landlord chose not to call the other three witnesses, as I had to end the conference after 89 minutes of hearing time, and the landlord did not want an adjournment of the hearing, which I offered to her, in order for me to hear from these witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord said that the tenant as well as his mental health team were personally served with the landlord's written evidence package but she could not recall the date. The tenant said that he did not receive it. I informed both parties that since the landlord could not provide a date for service and the tenant did not receive the landlord's

evidence, I could not consider the landlord's written evidence package at this hearing or in my decision.

The tenant confirmed receipt of the landlord's 1 Month Notice on November 26, 2018. The notice indicates an effective move-out date of December 31, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on November 26, 2018. A copy of the notice was provided for this hearing.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on March 1, 2018. Monthly rent in the current amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The rental unit is an apartment with two bedrooms and one bathroom, and is approximately 500 to 600 square feet.

Both parties agreed that the landlord issued the 1 Month Notice for the following reasons:

- *Tenant has allowed an unreasonable number of occupants in the unit/site*
- *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 another occupant or the landlord.*

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord stated that she is the owner of the rental unit. The landlord testified that she has no proof of illegal activity by the tenant, including any criminal charges or convictions. She claimed that there were ten people living in the rental unit with the tenant but could not provide proof of same, beyond claiming that she had done a few inspections of the unit and witness IM was sleeping over every day. She stated that the tenant's friends all park in the rental property parking lot so that there is no parking for the commercial business customers. She said that the tenant has breached his tenancy agreement by keeping a cat in his rental unit, which the tenant denied, as well as smoking in his unit and damaging his door. She also claimed that the tenant leaves garbage in his rental unit and in the rental property parking lot.

The landlord said that the tenant was brought to her by the mental health team and she is aware of his mental health issues. She stated that the tenant disturbs other occupants, residential and commercial, at the rental property. She said that there are four businesses and three other residential units at the rental property. She explained that the tenant plays loud music, yells, screams, and shouts in the hallway and inside his rental unit.

The landlord said that on November 15, 2018, the tenant had a big fight in his rental unit which resulted in a stabbing. She said that the police were called, they shut down two of the commercial businesses at the rental property, they put up yellow tape, and it was in the newspaper and on television. She claimed that the police told her to file a claim at the Residential Tenancy Branch ("RTB") and they would help her evict the tenant; she stated that one of the police officers gave her his business card.

The landlord stated that on January 14, 2019, the tenant's portfolio development officer, the tenant's mental health team and the police went to inspect the rental unit. She said that the tenant's own mental health team was scared to come to the rental unit without the police, because they claimed the tenant was dangerous, so they called the police to accompany them. She stated that the tenant started screaming and yelling during the inspection, so the police had to take the tenant out into the hallway to calm him down, but they had a hard time with him.

Witness KS testified that he is an employee of a non-profit organization that provides subsidies and community support teams to tenants. He claimed that his company pays the tenant's rental subsidy on behalf of the tenant to the landlord for this rental unit. He

stated that he was previously the tenant's community support worker approximately one year and nine months prior. He said that he attended the tenant's rental unit for an inspection on January 11, 2019. He maintained that the tenant's community mental health support team brought a police escort with them to the inspection. He explained that he could smell smoke in the unit, he noticed a cat food dish and a cat scratching post in the unit, there was damage to the unit, and it was cluttered with an excessive amount of possessions piled up against the walls and blocking the pathways. He said that the tenant became "quite agitated" during the inspection, yelled at the landlord's agent son, and had to be taken out to the hallway by the police who calmed the tenant down later.

Witness KS stated that this is the third eviction warning to the tenant, since the tenant won a previous RTB hearing because the landlord was not in attendance. In response to the tenant's agent's questions, witness KS confirmed that the landlord was aware that the tenant was involved in a mental health program since the beginning of his tenancy. He explained that the landlord still had to protect the other tenants in the rental building, and it was okay for her to pursue options at the RTB in order to do so. He claimed that the tenant had a choice to move into the rental unit, as he did not have to do so.

The tenant's agent said that there is a cannabis business below the tenant's rental unit, so there are a lot of people hanging around and knocking on the tenant's door, so he has had to send them away. He claimed that there was no evidence submitted by the landlord of any damage caused by the tenant to his rental unit; he claimed there was only damage to a handle stopper. He agreed that the landlord and the tenant's mental health team performed an inspection on January 14, 2019, in order for the tenant to sign a document allowing the landlord to inspect the rental unit. He maintained that the police always accompany the tenant's mental health team to the rental unit and the police were not required to calm the tenant down. The tenant's agent stated that the landlord has been harassing the tenant by giving him four previous eviction notices. He claimed that the tenant is entitled to have visitors at his rental unit.

The tenant testified that there was an incident at his rental unit on November 15, 2018. He said that two people came to his rental unit door, he told them to leave, he got upset, and someone stabbed him in the neck. He said that he filed charges against the person that stabbed him and the police took one person into custody. He claimed that he was the victim in the incident.

Witness IM stated that she was the girlfriend of the tenant. She claimed that she visits the tenant one to two times per week and sleeps at the rental unit. She maintained that

she and the tenant are quiet when she is visiting, they do not go out anywhere, they do not cause any problems in the rental building, and the tenant gets along with the person who lives across from him. She said that the tenant has been stressed and tense because of the landlord's 1 Month Notice.

Analysis

Credibility

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimony and their demeanour at the hearing. Considered in its totality, I found the landlord and witness KS to be more credible witnesses than the tenant and his advocate. I found the landlord and witness KS to be forthright, providing their evidence in a calm, candid and straightforward manner. They provided consistent and logical testimony.

I found that the tenant and his advocate were both argumentative and upset during the hearing. They did not provide their testimony in a calm and candid manner. When given the opportunity to cross-examine the landlord's witness KS, the tenant's advocate fought with the witness, rather than asking him questions, and interrupted the witness when he did not like the answers, not allowing the witness to properly finish his responses.

1 Month Notice

Despite the tenant's allegations that this is not the correct landlord for this rental unit, I find that the landlord named in this application is the proper landlord for this tenancy and rental unit. The landlord confirmed that she owns the rental unit, she signed the tenancy agreement in her name, and she issued the 1 Month Notice in her name. Copies of these documents were provided for this hearing. I find that the tenant failed to provide sufficient documentary or witness evidence to demonstrate that the landlord named in this application was not the correct landlord.

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on November 26, 2018, and filed this application to dispute it on December 6, 2018. Therefore, he is within the time limit under the *Act*. Where a tenant applies to dispute a notice within the timeline, the burden shifts to the landlord to prove the reasons on the notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I find that the tenant significantly interfered with and unreasonably disturbed the landlord and other occupants at the rental property. Since I have found one of the reasons on the notice to be valid, I do not need to examine the other reasons.

I accept the testimony of the landlord and the landlord's witness KS that the tenant's behaviour of repeatedly yelling and shouting in the hallways and inside the rental unit caused significant interference and unreasonable disturbance for the landlord and other occupants of the rental property.

I accept the landlord's and the tenant's testimony that a stabbing incident occurred at the rental unit on November 15, 2018, whereby the police attended. I accept the landlord's evidence that this incident, along with the police presence and the closing of two businesses to investigate this incident, caused significant interference and unreasonable disturbance to the landlord and the other occupants at the rental property.

I accept the landlord's and witness KS' testimony that the tenant's own mental health community support team required a police escort to the tenant's rental unit inspection recently in January 2019, after the 1 Month Notice was issued to the tenant. I accept the landlord's and witness KS' testimony that the tenant became upset and agitated during this inspection, such that the police had to take the tenant into the hallway to calm him down. I find that this caused significant interference and unreasonable disturbance for the landlord and other occupants of the rental property.

Section 55(1) of the *Act* reads as follows:

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 dismiss the tenant's application. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective five (5) days after service on the tenant, pursuant to section 55 of

the *Act*. I have provided additional time for the tenant to vacate the rental unit, rather than a two-day order of possession, since he has mental health issues and may require assistance from his mental health community support team in order to locate new housing.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an **Order of Possession to the landlord effective five (5) days after service on the tenant**. Should the tenant or anyone on the premises 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 23, 2019

Residential Tenancy Branch