



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC FF / CNC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;

The hearing was conducted by conference call. The hearing was heard on two separate dates in order to allow both parties sufficient time to present argument and evidence. All named parties attended both hearings with the exception of the landlord’s witnesses who were not required to attend the second hearing date as they had completed their testimony on the first hearing date.

The landlord acknowledged service of the tenant’s applications for dispute resolution including all evidence before me. The tenant acknowledged service of the landlord’s evidence package in response.

Preliminary Issue- Service of the landlord's application and introduction of a new witness

The landlord's application was filed only four days prior to the first hearing date; therefore it was originally scheduled to be heard separately on February 12, 2018. As this hearing was adjourned, the landlord's application was also adjourned to be heard together with the tenant's application as the matter was related.

The tenant testified that he was never served with the landlord's application. The landlord was not able to provide exact details of service but indicated that the application was posted to the tenant's door. The landlord did not take issue with the tenant's denial of service and withdrew its application during the hearing. As the tenant had already applied to dispute the One Month Notice, the landlord did not need to file its own application for the same issue.

At the outset of the reconvened hearing date, the landlord introduced a new witness who was not present during the first hearing date. The tenant objected to the new witness being called as the landlord had completed presenting its case in the first hearing. The landlord was not permitted to introduce the new witness as this witness was not present at the first hearing and the landlord had a full opportunity to call all of its witnesses during the first hearing.

Issues

Should the One Month Notice be cancelled? If no, is the landlord entitled to an order of possession for cause?

Background and Evidence

The tenancy for this affordable housing unit began on June 1, 2017. The rental unit is a 1 bedroom unit within a 44 unit apartment building.

On November 29, 2018 the One Month Notice was served to the tenant by posting a copy to the door of the rental premises. The tenant filed an application to dispute the Notice within the applicable time period under the Act.

The landlord issued the One Month Notice on the grounds that the tenant engaged in illegal activity which adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

On behalf the landlord, S.H. testified and provided submissions as follows:

- The landlord is a non-profit housing provider that offers affordable housing.
- The landlord also operates subsidized and supportive housing facilities.
- The tenant was housed in a building that only provides affordable housing without any supports and it is designated for individuals who are capable of living independently.
- The tenant previously did reside in a supportive housing facility operated by the landlord.
- The tenant was evicted from the supportive facility after a violent altercation with another occupant.
- The tenant was subsequently provided temporary accommodation in a subsidized housing facility.
- The tenant was asked to leave after run-ins with the police over threatening and aggressive behavior.
- The tenant was then provided another opportunity and housed in the current affordable housing unit. The landlord felt that the tenant's aggressive behavior escalated when he interacted with staff so perhaps an independent living arrangements would be more successful.
- Since the start of the tenancy the tenant has made threats to tenants and staff, has been aggressive in his interactions, and vandalized property on two occasions.
- After numerous complaints from different tenants and staff, 2 police files and 3 warning letters, the tenant was served with a One Month Notice.

The landlord submitted a detailed chronology of incidents and supporting documents involving the tenant from the beginning of the tenancies to the issuance of the One Month Notice. These include but are not limited to: The tenant leaving many abusive voicemails for staff; the tenant writing slanderous messages about the landlord on the front entry door on two separate occasions; complaints from other tenants and staff about the tenant's aggressive and verbally abusive behavior toward them; warning letters issued to the tenant; photos of furniture moved to the dumpster and a chair sliced by the tenant with a knife; and police incident reports.

The landlord argues that the tenant has been given fair warnings to correct his actions but has failed to cease his threatening behavior. The landlord submits that they are

obligated to end the tenancy in order to ensure the peaceful enjoyment of other tenants is restored and to ensure the safety and security of other tenants and staff.

The landlord's witness D.C. testified as follows:

- On November 5, 2019 he was vacuuming in the hallways of the building when the tenant came out and started yelling at him about his unhappiness with the cleaning.
- The tenant called him lots of foul names and was yelling right in his face.
- The tenant then went to the elevator and was banging on the elevator with his cane.
- The tenant then started moving furniture from his apartment into the dumpster in an aggressive manner while continuing to yell to him.
- D.C. later noticed stab marks all over a chair left in the dumpster.
- D.C. didn't see the tenant stabbing the chair.
- D.C. testified that this is the most anger he has ever witnessed from anybody.
- D.C. testified that he is leaving his employment due to fear for his safety as a result of the tenant.

The landlord's witness T.P. testified as follows:

- She witnessed the incident of the tenant screaming in the face of D.C. She was in her apartment when she heard the loud screaming.
- She witnessed the tenant drag furniture out of his apartment and he was smashing it with some sort of tool which she later learned was a knife.
- She has put in a request to the landlord to be moved off her floor due to all the yelling and screaming from the tenant.

The landlord's witness K.L. testified as follows:

- She tried to help the tenant by providing him with food etc.
- The tenant was trouble since he moved in.
- She was accosted by the tenant multiple times and on one occasion, the tenant accosted her in the foyer and raised his cane at her.

The tenant testified that 80% of the complaints against him are fabricated by 2-3 people in the building. The tenant argues that he has done nothing but good for the building. The tenant denies ever threatening anyone or that he is a danger to anybody. The tenant acknowledged that the police came on two separate occasions because somebody filed a complaint. The tenant submits that he was not arrested.

The tenant further argued that the landlord failed to provide appropriate supports for him. The tenant submitted various medical records which indicate that he suffers from previous brain injuries.

In response to the witness testimony of D.C. and T.P. the tenant testified that he only put holes in the chair because it was full of bugs and he didn't want someone else bringing it back into the building.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

I find the landlord has submitted sufficient evidence to support that on a balance of probabilities the tenant has engaged in illegal activity which adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant. Although the tenant has not been formally charged or convicted of any illegal activity, I find the tenant's repetitive aggressive behaviour towards other tenants and staff constitutes perceived threats which adversely affects the quiet enjoyment, security, safety and physical well-being of other occupants. The landlord has provided numerous witness letters, testimony from other tenants and staff in regards to tenant's aggressive behaviour and warning letters issued to the tenant for such. I also find that the tenant's actions of stabbing the furniture with a knife to be a veiled threat. I do not accept the tenant's testimony that this was only done to prevent someone from bringing the alleged bug infested furniture back into the building. I find that on a balance of probabilities, the tenant's actions were directly related to the heated argument he just had with D.C. I find the tenant left this argument by banging his cane on the elevator then proceeded to

engage in threatening aggressive behaviour by forcefully stabbing furniture he dragged out to the dumpster.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

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: March 14, 2019

Residential Tenancy Branch