



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENSORIO PACIFIC (KELOWNA)
LP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 1, 2019, and to recover the filing fee for this application. The matter was set for a conference call.

The Tenant, the Tenant's Agent and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were both 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 is described in this decision.

Issues to be Decided

- Should the Notice issued on February 1, 2019, be cancelled pursuant to section 47 of the *Act*?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Is the Tenant entitled to recover the filing fee paid for this application?

Background and Evidence

The parties testified that the tenancy began on September 1, 2018, as a one-year fixed term tenancy. The parties agreed that rent in the amount of \$840.00, is due by the first day of the month and that the Tenant paid a \$400.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both the parties agreed that the rental building houses only students, in a dormitory-like setting, but that the rental building is not owned or operated by an education institution, and that they all understood that they were entering into a residential tenancy agreement.

The parties agreed that the Landlord had served the Notice to end tenancy on February 1, 2019, by personally serving it to the Tenant. The Landlord 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:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Landlord testified that the Tenant's mother 'K.T.' (Tenant's Agent) had been harassing and threatening towards the Landlord, a contractor working for the Landlord (Contractor), and a property manager working for the Landlord (Property Manager) for months. The Landlord testified that the Tenant's Agent had been acting on behalf of the Tenant and that the Landlord feels the tenancy must end due to the aggressive and threatening actions of the Tenant's Agent. The Landlord submitted 29 pages of text messages received from the Tenant's Agent into documentary evidence.

The Tenant testified that due to her stressful workload at school, she had her mother 'K.T.' act as the Tenant's Agent with the Landlord, regarding ongoing issues the Tenant was having at the rental property.

The Tenant's Agent testified that there were problems with the rental unit from the moment the tenancy started, which included construction of the property not being completed for the promised move-in date causing a week's delay in the rental unit being available for move-in, many of the promised facilities and services not being installed or available, and that the expected level of security was not being provided to the rental property. The Tenant's Agent testified that she had remained in regular contact with the Landlord to order to get the promised services and to negotiate compensation. The

Tenant's Agent also testified that she had contacted the local media about the Landlord and had advised the Landlord she would call the media again if the services and compensation were not provided. The Tenant's Agent testified that she was just voicing her concerns and did not feel her actions were threatening.

The Landlord also testified that the Tenant and the Tenant's Agent had been sending harassing emails and text messages to another occupant of the rental building. The Landlord testified that the Tenant and the Tenant's Agent had been "belittling and name calling" the other occupant for several months regarding his life choices. The Landlord also testified that she had been made aware by the other occupant's family that he had a mental illness and that the family believes that the emails and text messages he received from the Tenant and the Tenant's Agent had caused him to attempt to take his own life. The Landlord submitted two emailed letters from the Property Manager and the parents of the other occupant into documentary evidence.

The Tenant and the Tenant's Agent testified that they had sent messages to the other occupant of the rental property and that they had known he had a mental illness. The Tenant and the Tenant's Agent testified that they did not agree with the other occupants drinking and other choices and had voiced their concern in their messages to him. The Tenant's Agent stated, no less than three times, during the hearing "you can't bully someone into committing suicide" and "you can prove what I said to him was bullying."

Analysis

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

I accept the testimony of the Tenant that she had assigned 'K.T.' to be her Agent, during this tenancy and I find that were it not for the Tenant's tenancy 'K.T.' would have no relationship with or contact information for the Landlord, the Landlord's Agents' or the other occupants of the rental property.

When a property manager is assigned by a landlord to manage a rental property all legal liabilities resulting from the action of the property manager fall on the landlord; similarly, I find that all the legal liabilities resulting from the action of the assigned tenant's agent fall on the tenant. As the assigned Tenant's Agent for the Tenant, I find that 'K.T.' assumed the role of Tenant in her interactions with the Landlord and that all the actions taken by her on behalf of the Tenant were, in fact, the actions of the Tenant. Therefore, the Tenant and the Tenant's Agent will be referred to as "the Tenant."

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case. I find the content and the number of text messages, set to the Landlord, the Contractor and the Property Manager by the Tenant, to have significantly interfered with or unreasonably disturbed the Landlord.

I have also reviewed the written complaints from the parents of the other occupant of the rental unit and the Property Manager, and I find, on a balance of probabilities, that they represent a credible account of the actions and disturbance caused by the Tenant during the tenancy. I also find that the other occupant of the rental property would have been significantly interfered with and unreasonably disturbed by these actions of the Tenant.

For the reasons stated above, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenant's application to cancel the Notice issued on February 1, 2019.

I find that the Notice issued on February 1, 2019, is valid and enforceable. I also find that based on the dated that this Notice was issued the earliest date that this tenancy could end in accordance with the *Act*, is March 31, 2019.

Section 55(1) of the *Act* states:

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 the 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.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 1:00 p.m. on March 31, 2019. Should the Tenant fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this application to dispute the Notice, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

The Tenant's application to cancel the Notice, issued on February 1, 2019, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord, effective not later than 1:00 p.m. on **March 31, 2019**. 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 20, 2019

Residential Tenancy Branch