



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MT OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 28, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both sides were present at the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord had a witness attend the hearing for support and the Tenant also had two neighbours attend to support him.

The Landlord stated that they received the Tenant's application and evidence. However, the Tenant stated that they did not receive the Landlord's evidence. The Landlord stated that he put his evidence in the Tenant's mailbox on February 20, 2019. The Tenant stated he never got this package, and the Landlord was unable to provide any further proof of service. I am not satisfied the Landlord has sufficiently served the Tenant with his evidence. As such, the Landlord's documentary evidence is not admissible in this hearing. The Landlord chose to proceed with just his own oral testimony, and that of his witness.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.
- more time to make an application to cancel the Notice.

Issues(s) to be Decided

- Is the Tenant entitled to more time to make an application to cancel the Notice?
- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on January 7, 2019. This Notice was issued on December 6, 2018, by the Landlord based on an incidence which took place on December 4, 2018. The Tenant stated that he was taken away under the Mental Health Act (MHA), and was hospitalized full time from the date of the precipitating incident (December 4, 2018), until January 7, 2019. The Tenant provided proof from the hospital.

The Tenant did not apply to cancel the Notice until January 16, 2019, and is asking for more time to apply because he was hospitalized, full time, without access to the Notice or the internet.

The Notice was issued for Cause as follows:

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.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *put the landlord's property at significant risk.*

Under the “Details of Cause” section, the Landlord indicated the following: “December 4, 2018, major police incident – 30+ officers including “SWAT” – Powell Street closed for several hours – Second floor tenants denied access to suites for several hours – threats uttered to use hatchet on other people – police stand-off for several hours – very dangerous and scary situation that traumatized staff and residents – Mental Health Act for persons on extended leave give police right to enter a suite by force if necessary.”

The Landlord and his witness only spoke to the issue on December 4, 2018, in the hearing. He indicated that the Tenant is supervised under the Mental Health Act, and he has psychiatrists, police, and support workers visit him regularly to ensure he is complying with his medication, and responsibilities. The Landlord indicated that the Tenant is required to comply with site visits and check-ins by his mental health team, or risk getting placed into 24-hour care/supervision. The Tenant acknowledged that he has been admitted on a couple of occasions under the Mental Health Act.

On December 4, 2018, the Landlord stated that the Tenant’s mental health team (police, psychiatrist, building workers) attended the Tenant’s rental unit to check in on him. The Landlord stated that the Tenant made a huge scene, and did not allow his workers to come inside. The Landlord stated that after the Tenant physically threatened the team of workers that arrived at his door, the scene became much worse, and it escalated to a point where the SWAT team was called, and the whole city block was shut down. The Landlord stated that there was a weapon involved, and that it may have been a hatchet. The Landlord stated that the Tenant told the crew that attended his unit that he would kill anybody who entered his unit.

At this point, the police escalated the incident, and a “stand-off” occurred, where the police blocked access and waited for the Tenant to emerge. The Landlord stated that eventually the police apprehended the Tenant, and arrested him. The Landlord stated that the Tenant was ascertained under the Mental Health Act, and was hospitalized for a month straight, following this incident.

The Tenant stated that he was “pissed off” and felt threatened by the mental health team that showed up at his door on December 4, 2018. The Tenant acknowledged that he started screaming and swearing through the door. The Tenant stated that the doctor tried to explain that he was there to deliver his medications but the Tenant was upset because he was not given proper 24 hour notice.

During the hearing, the Tenant acknowledged that he said he would “beat them up” if they entered his unit, but he denies saying he would kill them, or that he would do so with a hatchet. The Tenant stated that when the police finally entered, they shot him with rubber bullets, and arrested him. The Tenant feels he was treated unfairly and that the police abused their powers. The Tenant brought a witness, who agrees that the police were using excessive force and it was not the Tenants fault.

Analysis

I first turn to the Tenant’s application for more time to file his application to cancel the Notice. I allow the Tenant’s late application, since he provided proof of full-time hospitalization, and did not receive the Notice or have the ability to respond to it until he received it on January 7, 2019 (the day he was released from hospital). The Tenant applied to cancel the Notice within 10 days of receiving the Notice.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. I note in civil law matters such as these, the standard of proof is based on a balance of probabilities, not the criminal court standard of proof beyond a reasonable doubt.

The Landlord has issued the Notice under multiple grounds. However, I first turn to the following ground:

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.

I note the Landlord has multiple concerns with respect to the Tenant. However, I first turn to the incident on December 4, 2018, as it appears to be the incident that precipitated this Notice, and it was the focus of the hearing.

I have considered the totality of the situation, and I note the Tenant asserts that there were reasons why he was upset with the mental health team that attended his rental unit on December 4, 2018. I also note the Tenant was upset because he felt the team should have given him more notice, or attended the following day. However, I cannot ignore how drastically this incident escalated, and how it impacted staff and other tenants in the building. I note that part of the building was blocked off and the SWAT team was called as a result of the Tenant's behaviour. I also note that the Tenant admitted to threatening to "beat up" the people who were at his door. I find it likely that this threat caused a significant escalation, given that there were police, a doctor, mental health workers, and building staff nearby. I find the Tenants actions directly contributed to an unstable and unsafe situation.

I find the Tenant seriously jeopardized the health and safety of the other occupants and the Landlord. Based on this, I find the Landlord had sufficient grounds to issue the Notice.

Having made this finding, it is not necessary to consider the remaining grounds indicated on the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 4, 2019

Residential Tenancy Branch