



Dispute Resolution Services

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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* (the "**Act**") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution form on January 31, 2019. He testified that he left it with the landlord's assistant. The landlord confirmed receipt of the notice of dispute resolution package on January 31, 2019. I find that the landlord was served with this package on January 31, 2019, in accordance with section 89 of the Act.

The tenant testified that the landlord was served his documentary evidence on February 25, 2019. He testified that he left it with the landlord's assistant. The landlord confirmed receipt of the evidence, but testified that it was received on February 26, 2019. I find that nothing turns on this disagreement in dates. I find that the landlord was served with the evidence in accordance with section 89 of the Act.

The landlord testified that the tenant was served with two evidence packages. The first, in person on March 1, 2019 and the second by posting on the tenant's door on March 5, 2019 (after two attempts to personally serve him with the documents). The tenant confirmed receipt of the first evidence package on March 1, 2019. I find that the tenant was served with this package on March 1, 2019, in accordance with section 89 of the Act.

The tenant testified that he received the second evidence package, and had time to review it. However, as this package was delivered outside the time limit provided for in Rule of Procedure 3.15 (not less than seven days before the hearing), I must determine if the second evidence package may be admitted into evidence pursuant to Rule 3.17.

Preliminary Issue – Late Filing of Evidence

Although the tenant did not object to the entry of the second evidence package, I must determine if its entry into evidence is proper.

Rule 3.17 grants the arbitrator the discretion admit evidence later than seven days before the hearing. Per this rule, the landlord must show that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The second evidence package contains copies of redacted police reports concerning the complaints made by another tenant of the rental property (“**AM**”) against the tenant. These report served to corroborate emails of AM to the landlord contained in the first evidence package.

The landlord testified that these were not available to her at the time she served the first evidence package (March 1, 2019), and she was only able to obtain them on March 4, 2019. She attempted to hand deliver the second evidence package to the tenant on March 4, 2019, but was unable to, as he was not home. She returned the following day, and attempted to hand-deliver the package again. She was unable to, and posted the second evidence package on the door of the rental unit.

I am satisfied that the documents in the second evidence package are relevant to the case at hand, and was not available to the landlord at the time evidence was to be filed. Furthermore, as the tenant was able to review the second evidence package in advance of the hearing, I do not find that he is unreasonably prejudiced by their admission.

As the tenant did not object to the admission of the second evidence package, and sought no adjournment, and as he testified he had reviewed the second evidence package, I do not find that an adjournment of this hearing is necessary.

Accordingly, I admit the documents contained in the second evidence package into evidence.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Notice?

Background and Evidence

The parties entered into a fixed term tenancy agreement on December 1, 2014. It subsequently became a month to month tenancy, per section 44(3) of the Act. Monthly rent is \$829.00. The tenant paid the landlord a \$375 security deposit, which the landlord still retains. The tenant is not in rental arrears, and has paid rent for the month of March, 2019.

The landlord testified that the tenant was served with the Notice, dated January 14, 2019, by posting it on his door, on January 14, 2019. The tenant testified that he received the Notice on January 17, 2019. On the Notice, the landlord admits she incorrectly listed the postal code, substituting a “Y” instead of a “7”.

The 1 Month Notice indicates an effective move-out date of February 28, 2019.

The grounds to end the tenancy cited in that 1 Month Notice were:

- 1) the 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;

The landlord testified that AM had made numerous complaints to her about the noise and conduct of the tenant. AM sent several emails to the landlord documenting these disturbances, as follows:

- An email dated November 17, 2019, in which AM alleges:
 - The tenant has loud parties every several days that often start late in the evening and go all night. AM has called the police three times in connection with these parties.
 - On October 25, 2018, where the party continued until 7:30 am once the police left;
 - On November 11, 2018, where a woman was carried out of the rental unit on a stretcher by an ambulance
 - On November 12, 2018, where AM was woken up at 12:50 am, and AM called the police at 5:54 am, and again at 7:24 am.

- An email dated November 26, 2018, in which AM alleges:
 - “since Sunday three more episodes of 24-48 hour length partying have taken place.”
 - On November 18, 2018, “music started playing very loudly at 12:30 am and continued to 5:30 am.”
 - On November 23, 2018 “music started playing at 12midnight. Multiple guests arrived shortly after. Guests smoking on the front property shouted aggressively, calling [the tenant] to come outside.” As of November 24, 2018 at 6:00 am, this party continued.
 - “The tenant is a physically intimidating person and I have heard several period of aggressive yelling...there have also been periods of crashing and pounding coming from the unit. This sounds like something is being thrown or hit. This is extremely unsettling.”
 - “My husband and I are constantly disrupted by this behaviour. We use ear plugs, a loud fan and white noise through earbuds on our phones to try to cancel out the distractions. Despite this, most nights I am unable to sleep.”
- An email dated January 10, 2019, in which AM alleges:
 - That another party occurred, and she called the police.
 - The tenant yelled aggressive comments through the floor at her including “Jesus Fucking Christ” and “I’ll take you to court”
 - That when the police arrived and spoke with the tenant he yelled at them and the tenant “fuck you” “I fucking hate you” and “I will fucking hurt you”, which the police office described as “a drunken rage”.
 - She fears for her safety as a result.

The landlord testified that after the January 10, 2019 email, she issued the Notice. On January 28, 2019, AM gave notice to end her tenancy citing the issues with the tenant; her tenancy ended on February 28, 2019.

The landlord submitted police reports into evidence which confirm that the police visited the rental unit several times, including on:

- November 12, 2018, where an officer attended the rental unit at 5:55 am and spoke with the tenant who advised him he was “shutting down his party”. The officer attended the property again at 7:30 am and ensured the unit was emptied, the music shut off and people left the area. The officer advised the tenant that he would receive a ticket if any further disturbances occurred.
- November 26, 2018, where at officer attended the rental unit at 12:25 am in response to a noise complaint from AM, and advised the tenant of such.

- January 10, 2019, where the attending officers wrote they “spoke to [redacted] who had an outburst when confronted with the noise coming from [redacted] suite”, and that there was “no follow up was needed as there is no criminal offence at this time”
- January 11, 2019, where the attending officer took a statement from AM, and wrote that “[the officer] advised [AM and her husband] to continue to document interactions [with the tenant]” and “not to hesitate to call the police if needed”.

I note that nowhere in the police reports is there any reference to the tenant physically threatening AM.

The tenant provided three letters (two from other tenants in the rental building, as confirmed by the landlord) in support of his good character. Excerpts from these letters include:

- “[The tenant] is a very kind and caring man who has gone out of his way to offer a helping hand [...] during the time I have lived [in the rental property] I have never once felt like I were in danger. Having [tenant] as my next door neighbour, in fact, gives me a sense of safety and relief. He has never once made me feel uncomfortable.”
- “I have lived beside [the tenant] for the past five months and have never had any noise issues with him or his guests. I find him to be watchful of the building and [he] is a very caring person.”
- “[The tenant] has been polite and kind. I look forward to his greetings and chats as our paths often cross[...] I have often observed [the tenant] having many friends who also stop to visit and this includes some neighbourhood law enforcement officers”.

The tenant testified that his sister works for the local police department, and that the officers referenced in his neighbour’s letter above refer to officers he knows in the department through his sister, who come as guests to the rental unit.

The tenant strongly denied ever threatening AM. He states that he is a “big guy” and that some people may find that intimidating, but that he has not intentionally threatened her. He testified that he has been victimized in the past, and he knows what this feels like, and would not to cause others similar pain.

The tenant did not deny that police had visited the rental unit in following up on calls from AM, but rather characterized these as routine and a waste of time. His position is

that AM called the police unnecessarily and that the fact she did is not proof that disturbances took place as alleged by the landlord and AM.

The tenant also alleges that AM and her husband were noisy neighbours, but that he never complained about them.

Analysis

Error in Notice

The postal code on the Notice is incorrect. It is one character off. Section 68 of the Act states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I am satisfied that the tenant knew or should have known the correct postal code, and that this error did not cause him to believe that the Notice was intended for someone other than himself (I note that the tenant's name and street address were correct). In the circumstances I find it reasonable to amend the Notice so that the final character in the postal code is "7" rather than a "Y".

Tenant Seriously Jeopardized the Health or Safety of Another Tenant

Pursuant to Rule of Procedure 6.6, the landlord has the onus to prove the allegations leading to the issuance of the Notice. That is, the landlord must persuade me that it is more likely than not that the tenant jeopardized the health or safety of another tenant.

The synopses of events made by the officers in the police reports make no mention of threats made by the tenant to AM. Indeed they state that no illegal activity took place during their attending the rental unit on January 10, 2019 (which is the night AM alleged that the threat occurred). If the tenant threatened AM so as to jeopardize her health or safety, I find it unlikely that the attending officer would not have recorded it in their notes or stated that no illegal activity occurred.

In the absence of corroboration from the police reports, I am left to weigh the tenant's testimony against the allegations of AM contained in her emails sent to the landlord. I found the tenant's emotional denial that he threatened AM to be persuasive. As AM was not called as a witness, I am unable to assess her level of credibility.

As such, I find that the landlord has failed to persuade me that the tenant seriously jeopardized AM in any way, and has failed discharge their evidentiary onus.

Accordingly, this basis for issuing the Notice is not valid. However, this does not mean that the Notice itself is invalid. If one basis for issuing the Notice is valid, the Notice itself is to be considered validly issued.

Tenant Unreasonably Disturb Another Tenant

While the tenant did deny that he unreasonably disturbed another tenant, he did not deny that the police attended the rental unit as alleged by the landlord. Rather, he downplayed the extent to which he was disturbing other tenants, and characterized these visits as, essentially, inconsequential. Upon my review of the police reports, I find that this is not the case.

In particular, in the early morning hours of November 12, 2018, police officers attended the rental unit twice in response to complaints from AM. At 5:55 am, the tenant was hosting a party (as is evidenced by his telling the police officer that he was "shutting down his party"). This party was loud enough to cause another tenant to call the police. Furthermore, following this first visit, the police attended the rental unit a second time some 90 minutes later, following second call from the other tenant, and had to remain at the rental unit until the party disbursed.

I do not find such conduct to be reasonable at all, and that, by engaging in it, the tenant unreasonably disturbed another tenant.

The police reports generally corroborate the allegations of the other tenant, in so far as they confirm noise complaints were made, and police attended. The descriptions of the events in the reports are not as detailed as the other tenant, but do not suggest that the tenant was engaging in inconsequential:

- On January 10, 2019, the tenant had an "outburst" when confronted by the attending officer.

- On January 11, 2019, the attending officer encouraged the other tenant to contact the police, if needed. I do not think this is something an officer would say if the call outs were of an inconsequential nature.

The other tenant gave notice to vacate the rental property following the events in January, citing their severity as the reason for leaving. I do not find it likely that this tenant would leave the rental property if the disturbances were inconsequential in nature.

In light of the police reports, I find that the letter from the tenant's neighbour wherein she stated that she has "never had any noise issues" with the tenant to be of no persuasive value.

I find the allegations of AM as set out in her emails to the landlord, and as corroborated by the police reports entered into evidence, to be more credible than the version of events set out by the tenant. As such, I find that the tenant unreasonably disturbed another tenant, another occupant of the rental property.

I find that the landlord properly issued the Notice and that the Notice is valid. Accordingly, I dismiss the tenant's application to cancel the Notice.

Section 55 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 find that the Notice complies with section 52 of the Act. As I have dismissed the tenant's application, section 55 requires that I issue an order of possession to the landlord. As the tenant has paid rent for March 2019 in full, I make the order of possession effective as of 1:00pm March 31, 2019.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant and any other occupant(s) of the rental unit deliver full and peaceable vacant possession and occupation of the rental unit to the landlord by 1:00pm March 31, 2019.

Should the tenant fail to comply with this Order, this Order may be filed in, 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 13, 2019

Residential Tenancy Branch