



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The Tenant and a support worker were present for the teleconference hearing. Only the Tenant participated in the hearing. Four agents for the Landlord were also present for the hearing, with three presenting testimony and evidence (collectively the “Landlord”). The Landlord also had three witnesses present at the start of the hearing who were asked to exit the hearing until it was time to present their witness testimony. One of the witnesses was unable to be reached during the hearing but the other two witnesses attended the hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence package. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on June 1, 2015. Current monthly rent is \$439.00 due on the first day of each month. A security deposit of \$175.00 was paid at the outset of the tenancy.

The Landlord stated that they served the Tenant in person with a One Month Notice on March 15, 2019. The Tenant confirmed receipt of the One Month Notice on this date.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- 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
- 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

The Landlord provided further details on the One Month Notice as follows:

Allowing known drug users and drug sellers frequent access to the building for extended periods.

The Landlord testified that the building caretakers and other occupants of the residential property have been seeing many people in the building who are known to be drug dealers. The Landlord stated their position that it is the Tenant who is letting these people into the building. They stated that they have watched the surveillance video that shows the Tenant at the front door letting the visitors into the building. The Landlord also noted that other occupants have seen the visitors entering the Tenant's rental unit.

The Landlord stated that they have had many calls and letters of complaint and referenced the letters they submitted as evidence. The Landlord's evidence regarding the Tenant's behaviour is as follows:

- A letter dated February 25, 2019 from another occupant in the rental unit who lives below the Tenant. States that the writer heard yelling, stomping and throwing furniture from the Tenant's unit and noted that the police were called.
- A letter dated February 25, 2019. Does not indicate who the letter is from. States that the Tenant had a guest who overstayed their welcome and they asked the guest to leave. States that there was a disagreement and the police attended.
- An email from the caretaker dated March 11, 2019. Notes that he found 2 plastic bags when clearing a blocked toilet in the Tenant's rental unit. Noted that there was someone else in the Tenant's unit when he attended and that the Tenant would not let him in for 5 minutes.
- Email from the caretaker dated March 13, 2019. Notes that the Tenant buzzed himself into the building instead of using keys and that the Tenant was heard talking to another person in his rental unit.
- A photo that the Landlord stated is the Tenant using the buzzer to enter the building instead of keys.
- An email dated March 19, 2019 from the Landlord to the police. Notes that drug dealers and prostitutes are present in the building and asks for advice.
- A note dated March 21, 2019. Not clear who it is written by. States that a drug dealer was selling drugs in the walkway and that a drug dealer was selling drugs to someone in a truck.
- Incident report dated March 22, 2019 from another occupant of the residential property. States that there is constant traffic due to the Tenant, including drug dealers and prostitutes.
- An email from the caretaker to the Landlord dated March 27, 2019 stating that another occupant notified him that the Tenant's guests are selling drugs on the property and that the Tenant advised them to sell off the property until the hearing had occurred.

The Landlord stated that they have seen on the video footage that Tenant passing his keys to people who do not live in the building. They also noted that the Tenant has been letting people into the building at inappropriate times of the day.

The Landlord's witness, B.H. lives in another rental unit in the building. This witness provided testimony that there are people calling up the Tenant's rental unit at all hours

of the day. She referenced a time when a woman who seemed to be using illegal drugs arrived to see the Tenant and stated that she lived with him. The witness stated that her rental unit is above the entrance to the building, so she sees the Tenant's guests coming and going all of the time.

The Landlord's second witness, G.B. also lives in the same building as the Tenant. This witness stated that he sees people constantly coming in and out of the building and going up to the Tenant's apartment. He noted police attendance at times and has also seen people entering with a key and coming into the Tenant's apartment. The witness further stated his belief that the Tenant's guests are involved in drug dealing and prostitution.

The Tenant questioned witness G.B. as to how he knew the guests were involved with drugs or prostitution and the witness stated that it was due to the looks of the people and because they come and go so often. The Tenant explained that he attends support groups and notes that the people who attend these support groups with him may have a certain look but does not mean that they are involved with drugs or prostitution.

The Landlord testified regarding a time they attended the rental unit to respond to an overflowing toilet and that there was another person sleeping on the Tenant's couch. They also noted that the Tenant did not let the caretaker in for 5 minutes. The Landlord stated that there were two small empty plastic bags found in the toilet.

The Tenant stated that when the Landlord attended the rental unit due to the overflowing toilet he had a friend staying over as he was recovering from surgery. He also stated that he was sleeping at the time the caretaker arrived so needed a few minutes to get dressed.

As for the time the Tenant entered the rental unit by using the buzzer, the Tenant stated that he had a friend over who was helping him after surgery. When he went out for a walk, the Tenant stated that he forgot his keys which is why he used the buzzer for his friend to let him in. The Tenant stated that he had given his keys to friends during the time they were helping him recover.

The Tenant submitted a letter from a doctor dated March 25, 2019 which notes that the Tenant had a procedure on January 21, 2019 in which he needed six weeks to recover and another procedure on March 13, 2019 with three days recovery time needed. The Tenant also submitted many letters of support, including letters from neighbours at the

residential property which note that they do not have any concerns with the Tenant's behaviour.

Analysis

Section 47(4) of the *Act* states that a Tenant has 10 days in which to dispute a One Month Notice. As the Tenant received the notice on March 15, 2019 and applied for dispute resolution on March 19, 2019, I find that the Tenant applied within the time allowable under the *Act*. Therefore, the matter before me is whether the reasons for the notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

While the Landlord provided significant testimony and evidence regarding their concerns over the Tenant's behaviour, I do not find that they have met the burden of proof to establish that the Tenant or a guest of the Tenant's has significantly interfered with or unreasonably disturbed others or engaged in illegal activity that has adversely affected other's quiet enjoyment.

The Landlord and Tenant provided differing, but equally plausible, accounts of what has occurred with guests of the Tenant's in the building. When the parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

The One Month Notice states that the Tenant is frequently providing access to the residential property to others and that some of these people are known drug users. However, while the witnesses and witness statements reference multiple people coming and going, I find that there is insufficient evidence to link these people to the Tenant and to connect the Tenant or the Tenant's guests to any illegal activity. The Landlord and witnesses testified as to their belief that people using illegal drugs on the property were provided access to the property by the Tenant, but I fail to find evidence to establish this.

I also do not find sufficient evidence that illegal activity occurred that led to the Tenant's toilet overflowing, or that the Tenant using the buzzer to enter the building is due to

illegal activity and/or causing significant disturbance. I find the Tenant's statement regarding having friends staying with him following surgery to be reasonable and accept the doctor's letter that support the Tenant's statements regarding surgery.

While the Landlord submitted a significant amount of evidence, I find that the evidence does not establish their claims as stated on the One Month Notice. Instead, I find the evidence to be fairly non-specific regarding people visiting the building and unsubstantiated claims that illegal activity is occurring by the Tenant or the Tenant's guests. While frequent guests may be disturbing to other occupants and the Landlord, I am not satisfied that this meets the definition of significant interference or unreasonable disturbance as stated in Section 47 of the *Act*.

As such, I do not find that the Landlord has met the burden of proof to establish that the reasons for the One Month Notice are valid in that the Tenant or a guest is causing significant disturbance or engaging in illegal activity. Therefore, the Tenant's application to cancel the notice is successful.

The One Month Notice dated March 15, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The One Month Notice dated March 15, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: May 14, 2019

Residential Tenancy Branch