



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with the tenant's application pursuant to to the *Residential Tenancy Act* (the "Act") for:

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

JW appeared on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord's agent confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials that they were ready to proceed.

The tenant confirmed receipt of the 1 Month Notice dated April 24, 2019. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began in July of 2016, with monthly rent currently set at \$375.00 per month, payable on the first of each month. The tenant continues to reside in the rental suite.

The landlord issued a 1 Month Notice to End Tenancy on April 24, 2019, providing four grounds:

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;
2. The 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; and
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize the health or safety or lawful right of another occupant or the landlord; and
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord is seeking the end of the tenancy for the following reasons. The landlord's agent testified that the tenant has received 3 review letters, dated September 26, 2018, December 26, 2018, and March 18, 2019, addressing the tenant's non-compliance with building rules and tenancy agreement. The 1 Month Notice was issued on April 24, 2019 after the issuance of the third letter and multiple opportunities for the tenant to correct her behaviour. The landlord's agent testified that the disturbances have been significant enough for the police to be called. After many documented incidents, and attempts to address the matter with the tenant, the landlord feels that the tenant has failed to correct her behaviour within a reasonable amount of time after been given notice to do so, and therefore this tenancy must end.

The landlord provided evidentiary materials documenting the tenant's behaviour. The incidents include yelling, banging on walls, verbal aggression towards staff, disobeying guest policies, noise complaints from other occupants, ignoring guest sign-in policies, as well as alleged illegal activity.

The tenant testified in the hearing that she does not recall receiving the third letter, but acknowledges that she did receive the first two. The tenant's witness, RB, testified in this hearing that the tenant suffers from mental health issues, which is managed with medication. RB testified that the housing is specialized mental health housing, and is meant to house tenants such as the tenant, who was not on her medication at the time of these incidents.

The tenant admitted that she had forgotten to take her medication, but has now addressed the matter by changing the method to a monthly injection. The tenant feels that the landlord's submissions are not completely accurate as she had attempted to sign in her guests per protocol, but the staff had neglected to document this.

The landlord responded in the hearing that despite the fact that this is supported housing for tenants such as EE, the tenants are still obligated to follow the rules. The landlord feels that the number of incidents and complaints are of a serious enough nature to warrant the end of this tenancy.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed her application on May 3 2019, eight days after the date the tenant received the 1 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

I have reviewed the documentary materials, as well as the sworn testimony of both parties. Although I am sympathetic towards the tenant that she does suffer from mental health issues that affect her ability to manage her behavior, and although I acknowledge the fact that she is taking medication that helps her manage her behaviour, I find that the tenant had multiple opportunities to address the landlord's concerns. The tenant's testimony is that she had forgotten to take her medication, and that she had only received two of the three warnings issued by the landlord. Despite these explanations, I find that the landlord's evidence demonstrates the landlord's tolerance and patience with giving the tenant multiple opportunities to correct her behaviour. I find that the tenant had acknowledged that she had received two of the letters, which date back to September 2018. The landlord did not issue the 1 Month Notice until almost the end of April 2019, after the tenant had repeatedly violated the same rules as documented in the landlord's evidence. I find that the tenant failed to correct her behaviour despite that she had over 6 months to do so, including addressing her inability to take her medication as prescribed in order to manage this behaviour. I find that the tenant's behaviour is

serious enough in nature to have significantly affected the landlord, the staff who work in the building, and other tenants.

For the reasons cited above, I find that the landlord has met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*, and accordingly I am dismissing the tenant's application for cancellation of the 1 Month Notice dated April 24, 2019.

Section 55(1) of the *Act* reads as follows:

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 landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, May 31, 2019. As the tenant has not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim.

Conclusion

I dismiss the tenant's application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of May 31, 2019.

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.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim.

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: July 8, 2019

Residential Tenancy Branch