



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 690324 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC

Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant represented herself with assistance. The corporate landlord was represented by its agent GR (the "landlord").

As both parties were present service of all documents was confirmed. The parties each confirmed they were in receipt of the other's materials. Based on the testimonies I find that all of the respective materials were served on the parties in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

This periodic tenancy began in 2017. The rental unit is a suite in a multi-unit building containing 56 units.

The landlord testified that the tenant has allowed a boyfriend and a pet dog to reside in the rental unit despite their not being on the tenancy agreement. A copy of the tenancy agreement was submitted into evidence. The landlord said that the tenant was verbally informed that this action was a breach of the tenancy agreement.

The landlord submits that the tenant and her boyfriend have engaged in loud fights on a number of occasions causing disturbance to the other residents of the building. The landlord made reference to a specific incident on April 4, 2019 where they submit that the front door to the unit was broken during a fight.

The landlord said they issued a letter regarding the April 4, 2019 incident. This undated letter was submitted into written evidence. The landlord issued the 1 Month Notice on May 7, 2019 as they did not see changes to the tenant's behaviour. The 1 Month Notice was served on the tenant by registered mail sent on May 8, 2019. The tenant testified that they received the 1 Month Notice on May 17, 2019.

The landlord said that subsequent to issuing the 1 Month Notice there has been further incidents. The landlord submits in their written materials:

The reason we evicted her is because a man and his dog moved in and despite me telling her he had to go she has ignored me. And then the fighting started scaring the other tenants around her.

On April 4, 2019 that man around 4AM star banging the door and screaming disturbing the tenants all around her place, the banging was so hard that he broke the door. We give a note on writing to her demanding that that man and his dog has to go immediately from her suite.

Recently on June 18, 2019 at 10:53 AM I have to call the 911. Screaming and fight came from her suite [...]. The guy came out of the suite screaming with a machete in his hand. Tenant all around her suite came out and witness the scene, some of them was very scare. They head out of the building and get into USV and leave.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days after the day the notice is received, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

In the present case, based on the testimonies I find that the tenant received the 1 Month Notice on May 17, 2019 and filed their application for dispute resolution on May 28, 2019, within ten days after the date of receipt provided under the *Act*.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter the landlord indicated that the reasons for the tenancy to end is a breach of a material term of the agreement and that the tenant, or person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Residential Tenancy Policy Guideline 8 defines a material term as term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the other party in writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

I find that there is insufficient evidence that the landlord provided written notification to the tenant of a breach. The only written correspondence issued to the tenant by the landlord is an undated note which states in part, "And as I told you before the man and the dog have to go". I find that this is not sufficient to inform the tenant that the perceived issue is a material breach, nor has the landlord given a reasonable deadline to correct the issue. While the landlord submits that they had verbally warned the tenant on separate occasions, I find that is insufficient to end this tenancy for a breach of a material term.

The landlord submits that the tenant and a boyfriend permitted onto the property by the tenant have caused unreasonable disturbance and significant interference with other occupants. I find that there is insufficient evidence in support of the landlord's claim. The two vague notes submitted are insufficient to meet the landlord's evidentiary onus. One anonymous note reference an event that occurred after the issuance of the 1 Month Notice and the other makes vague reference to complaints received about the tenant. I find the landlord's submission that they called the police due to the tenant's behaviour to be neither persuasive nor convincing. Overall, I find that the landlord's evidence to be insufficient to meet their evidentiary burden. As such, I allow the tenant's application to cancel the 1 Month Notice. This tenancy continues until ended in accordance with the Act.

As the tenants did not articulate what aspect of the Act, regulations or tenancy agreement they believe the landlord is in breach of, I dismiss this portion of the tenant's application.

Conclusion

The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The balance of the tenant's application is dismissed without leave to reapply.

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 15, 2019

Residential Tenancy Branch