



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAMLOOPS AND DISTRICT ELIZABETH FRY
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LAT, LRE, OLC, RP, OPC

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- an Order of Possession pursuant to section 55

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

After approximately thirty minutes, the tenant stated that she was unable to stay on the telephone for the hearing. I told the tenant that the hearing was scheduled for an hour and the hearing would continue in her absence if she hung up. The tenant did not request an adjournment and the tenant disconnected. The hearing continued in the tenant's absence.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the One Month Notice.

The tenant's other claims are unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the One Month Notice.

Issue(s) to be Decided

Is the tenant entitled to an order for cancellation of the landlord's One Month Notice pursuant to section 47?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Background and Evidence

The tenancy started on January 10, 2014.

The landlord issued the One Month Notice on June 4, 2019 and the tenant testified that she found the notice posted on her door the same day. The landlord checked the following as grounds for the One Month Notice:

- 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.
- 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 the other occupant
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord produced a statement from a witness named E.M. who stated that the tenant frequently harassed her with discriminatory comments and the tenant frequently disturbed with loud yelling.

The landlord produced another statement from a witness named P.G. who stated that the tenant bragged about entering another unit in the building and taking possessions from the rental unit.

The landlord produced another statement from a neighbouring tenant named B.M. who stated that the someone had entered her rental unit without her permission and removed personal items.

The landlord testified that the tenant advised the landlord that she had entered the neighbouring unit two days later and the tenant turned over opened mail. The tenant initially testified that she entered the neighbouring rental unit because she heard a loud

noise so she entered the rental unit to see if the tenant was okay. Later, the tenant changed her testimony and said that she entered the rental unit because the landlord asked her to watch over the building. The landlord testified that they never instructed the tenant to watch the building or enter any other rental unit.

The tenant testified that she took mail because she thought the mail was for the former tenant that resided there.

The landlord testified that the tenant had frequent guest who was very disruptive. The landlord testified that this guest was frequently intoxicated, he frequently banged loudly on doors and he threw rocks at windows. The landlord testified that the tenant's guest had also pulled the building fire alarm and criminal charges were pending for this.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a. The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b. The tenant is repeatedly late paying rent;
- c. There are an unreasonable number of occupants in a rental unit;
- d. The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- e. The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- f. The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;

- g. The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- h. The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- i. The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;
- j. The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- k. The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- l. The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - i. The date the tenant receives the order;
 - ii. The date specified in the order for the tenant to comply with the order.

To dispute the One Month Notice, the tenant must file his Application for Dispute Resolution within 10 days of service of the notice pursuant to section 47(4) of the *Act*. Since the effective date of service of the One Month Notice was June 4, 2019, the tenth calendar day after the date of service was June 14, 2019. Accordingly, the tenant timely filed this application for dispute resolution by filing it on June 14, 2019.

I will analyze each of the landlord's grounds for ending the tenancy separately.

The first ground for ending the tenancy claimed by the landlord is a contention that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find that the provided sufficient evidence to establish on the balance of probabilities that the tenant has unreasonably disturbed other occupants. The landlord provided a witness statement saying the tenant has frequently harassed her with discriminatory comments and the tenant frequently disturbed with loud yelling.

The landlord also produced a witness statement wherein another resident claimed that her rental unit was entered without her permission and items were taken and another resident provided a statement that the tenant bragged about doing. Since the tenant

changed her explanation for this event during the hearing, I did not find the tenant's explanation to be credible.

The landlord also produced evidence that the tenant's guest was frequently intoxicated, harassing and he pulled the fire alarm.

I find that these events constitute an unreasonable disturbance other occupants. Accordingly, I deny the tenant's request to cancel the One Month Notice.

Section 55 of the *Act* states that a landlord is entitled to an order of possession if the tenant's application to cancel a notice to end tenancy is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*.

I find the form and content of the One Month Notice complies with section 52 of the *Act*. Although the landlord has misspelled the tenant's name on the One Month Notice, I find that this spelling mistake is trivial and has no effect on the validity of the notice. Accordingly, I find the landlord is entitled to an order of possession effective July 31 31, 2019.

Conclusion

All the tenant's claims, other than the tenant's claim for cancellation of the One Month Notice, are dismissed with leave to reapply.

The tenant's claim for cancellation of the One Month Notice is dismissed without leave to reapply.

I find the landlord is entitled to an order of possession effective at **1:00 p.m. on July 31, 2019**. 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: July 28, 2019

Residential Tenancy Branch