



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 1 Month Notice) pursuant to section 47.

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 confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with copies of the tenant's Application. The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find that the tenant was duly served with copies of the landlord's evidence. The tenant did not submit written evidence for this hearing.

As the tenant confirmed receipt of the 1 Month Notice dated May 31, 2019, which was personally served to him on the same date, I find the tenant duly served with the 1 Month Notice pursuant to section 88 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

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.

This month-to-month tenancy began in 2010, with monthly rent currently set at \$328.00, payable on the first of each month.

The landlord served the tenant with a 1 Month Notice to End Tenancy on May 31, 2019 providing two 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 seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord is seeking the end of this tenancy for the following reason. On May 27, 2019, the tenant was involved in an assault of another resident. The tenant does not dispute that he had committed the assault, but provided an explanation of why it had happened. The tenant's social worker provided some background on the tenant's mental health. The social worker testified that the tenant suffers from both childhood trauma, as well as from mental illness. The tenant testified that due to these issues, he was triggered when the other party had made an unwanted sexual advance towards him, and he had reacted by assaulting the other party. The tenant testified that he is now receiving treatment and counselling to deal with these issues, and prevent future incidents like these. The tenant and his social worker expressed concern about how the termination of this tenancy would render the tenant homeless, which would have a significant impact on him given his mental health issues and need for stability.

The landlord agreed that if the Order of Possession, if granted, can be extended for July 31, 2019 in order for the tenant to have some time to seek alternate housing.

Analysis

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may dispute the 1 Month Notice by filing an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant filed his application 3 days after receiving the 1 Month Notice. As the tenant filed their application within the time limit under the *Act*, the onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

I find that the landlord provided undisputed testimony to support that the tenant was involved in an assault of another resident in this building. Although the tenant provided an explanation for why this assault had happened, I am satisfied that the landlord had provided sufficient evidence for me to find that the tenant's actions had seriously jeopardized the health, safety, and lawful right of another occupant. Although I am sympathetic towards the struggles that this tenant had faced in his life, I find that this incident is serious enough in nature to justify the end of this tenancy on the basis of the 1 Month Notice. Accordingly, I dismiss the tenant's application to cancel the 1 Month Notice.

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.

A copy of the 1 Month Notice was submitted for this hearing, and 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, June 30, 2019. I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession for July 31, 2019, which must be served on the tenant. If the tenant does not vacate the rental unit by July 31, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 June 30, 2019.

I grant an Order of Possession to the landlord effective July 31, 2019. Should the tenant(s) fail to comply with this Order, this Order may be filed 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: July 16, 2019

Residential Tenancy Branch