



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC FFT OLC**

Introduction

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

- An order to cancel a One Month Notice to End Tenancy for Cause pursuant to section 47;
- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

The tenant attended the hearing assisted by an advocate, MW ("tenant"). The landlord was represented by his agent, AF ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution. The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Preliminary Issue

The tenant acknowledges he filed an online application for dispute resolution on June 7, 2019 seeking an order for the landlord to comply with the act and an authorization to recover the filing fee. On June 17, 2019, he amended his application to include the application to cancel the One Month Notice to End Tenancy for Cause ("Notice") delivered to him on May 30, 2019. The tenant originally intended on seeking to cancel the Notice but attributes the omission in his original application filed on June 7, 2019 to an oversight. The landlord was prepared to proceed with hearing the merits of tenant's entire application, including the application to cancel the Notice. The hearing was conducted in accordance with Rule 6 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the tenant entitled to:

- An order to cancel a One Month Notice to End Tenancy for Cause pursuant to section 47;
- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

Background and Evidence

The landlord provided the following testimony. The rental unit is one of several rental units located on her property, located on a large acreage. It consists of one-half duplex on a property with two rental duplexes and the family residence. The property also includes a shop, a barn and another outbuilding.

The landlord purchased the property in January 2019 and moved in March 2019. The tenancy with this tenant had been established with the previous landlord who sold the property to them. Rent was set at \$640.00 per month payable on the first day of each month. A security deposit in the amount of \$300.00 was taken by the previous landlord which the current landlord continues to hold.

The tenant paid rent for the month of March on time but paid the April rent on April 6th, 2019. Rent for the month of May was paid in two installments on May 2nd and May 3rd. The tenant provided evidence of these payments by copies of receipts issued by the landlord. Another receipt issued on May 22nd, was also provided.

The landlord testified that the tenant regularly yells, swears and drives erratically on the shared property while intoxicated. She provided testimony of two incidents that she specifically recollects, the first on Mothers Day, 2019. On this day, the landlord was out on her patio when the landlord heard a 'bang' and then heard yelling and screaming from the tenant. The tenant's screaming of profanities was directed directly at the female landlord causing the landlord and her family to feel threatened and leave the property. The landlord is scared to let her children out or let her animals out for fear of the tenant and his unpredictable nature.

The other incident occurred when a new tenant moved into an adjacent rental unit on the property. While the landlord was fixing a plumbing problem in that unit, the tenant/applicant in this proceeding invited himself to the new tenant's home, gave the new tenant a welcome gift then proceeded to get intoxicated on the alcohol he brought. This, and the tenant/applicant's attitude toward her dog made the other tenant uncomfortable and the new told him to leave. This tenant has provided a statement entered into evidence by the landlord. The statement ends with the following:

No one should have to live with that type of behaviour. I'm not even close to his house and he's disrespectful, disruptive, his behaviour is beyond acceptable for children to overhear and I'm sure even frightening.

The landlord's witness, MG provided a written statement and gave the following testimony. She lives in the other half of the duplex. Within 3 weeks of moving in, she had to start locking her door which she never did previously. The tenant would come to her residence without permission at all hours of the night, screaming about events that took place at the bar where he was refused drinks.

The witness testified that there are criminal charges before the courts in relation to an incident that took place in August 2018 where the tenant had sexually assaulted her. These charges have not been proven in court. Details of the incident were described but are not reproduced here.

The witness recounted an incident where the tenant called her on March 22, 2019 complaining about the landlords and asked her to withhold rent from the landlords. When the witness wouldn't cooperate, the tenant swore and screamed at her, called her profane names then hung up on her. The witness testified she has retained a log of the call she received that day.

The witness also testified that she personally saw the tenant remove a microwave from the landlord's workshop after his own microwave stopped working. The tenant told her

the workshop holds lots of things that are available for the taking as the new landlords are unaware of the workshop's contents.

The witness further testified the tenant got aggressive with her on Mothers Day, May 11, 2019. He threatened to kill her, yelled and screamed, banged on her door and 'completely freaked out' on her. The witness moved out of the duplex and into a shelter immediately thereafter. The witness continues to fear for her own safety from the tenant.

The landlord served the tenant with the One Month Notice to End Tenancy For Cause ("Notice") dated May 30, 2019 by personal service. In evidence, the landlords provided a document stating the Notice was served on May 29, 2019 at 10:00 p.m. The reasons provided for ending the tenancy were:

- Tenant is repeatedly late paying rent
- 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.
- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to (left blank)

The landlord testified she did not know which option to choose following the last statement, but now believes it should read:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The tenant provided the following testimony. He admits rent was paid late twice. Once in April and once in May. Copies of receipts provided by the landlord were given in evidence by the tenant. There have been no other incidents of late payment of rent with this landlord. The tenant disputes the witness' statement that he called her on the phone stating he does not know her phone number. He may have had it at one time but no longer does.

He recalls welcoming the new tenant and offering to assist the landlord in repairing the plumbing issue. The tenant testified there have been no convictions of driving under the influence for him.

Analysis

While the landlord has provided evidence to indicate he served the tenant with notice on May 29th, the tenant acknowledges being served with the Notice on May 30, 2019 by personal service. Given the fact that the Notice is dated May 30th, the day *after* it was allegedly served, I accept the Notice was served on May 30th in accordance with sections 88 and 90 of the Act.

The tenant acknowledged at the commencement of the hearing that the original online application for dispute resolution filed on June 7, 2019 did not include an application to dispute the One Month Notice to End Tenancy for Cause. It wasn't until June 17th that the tenant amended his online application to include this.

Sections 47(4) and (5) of the Act state:

- (4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.
- (5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and
 - (b) must vacate the rental unit by that date.

I have considered the circumstances around the tenant's filing of his original application and amendment. When he originally filed his application on June 7th, he provided a copy of the Notice as well as rent receipts which seem to indicate his intent to dispute the Notice. Section 47(4) is clear, however that a tenant must make an application to dispute the Notice within 10 days after receiving the it. It wasn't until June 17th, eighteen days after receiving the Notice that the tenant amended his application to dispute it. I find that the tenant did not dispute the Notice within the 10 day time frame as set out in section 47(4) and he is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice, or June 30, 2019 in accordance with section 47(5).

I uphold the landlord's Notice. I have examined the landlord's notice and find that it complies with the form and content provisions of 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.

To dismiss the tenant's application based solely on the timing of his application would bring the administration of justice into disrepute. I also make the following findings with respect to the merits of the case.

When a tenant files an application to dispute a Notice, the landlord must show on a balance of probabilities, which is to say it is more likely than not, that when the landlord gave Notice to the tenants, the tenancy should be ended for the reasons identified. In the matter at hand the landlord must demonstrate that as of May 30, 2019:

- o Tenant is repeatedly late paying rent
- o 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.
- o 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.

I am not satisfied the tenant was late in paying rent on more than 3 occasions. Likewise, the landlord failed to indicate on the Notice the nature of the illegal activity the tenant or a person permitted on the property has engaged in. Those reasons for ending the tenancy are dismissed.

The landlord has provided compelling evidence to indicate the tenant has demonstrated a sustained pattern of disturbing behaviours which have affected not only the landlord and her family, but other tenants on the property.

The landlord's witness has provided credible, undisputed testimony regarding the ongoing disturbance and harassment caused by the tenant that she feels victimized by. From the events that took place in August of 2018; the phone call on March 22, 2019 where the tenant asked her to withhold rent from the landlord; and most compellingly the yelling, swearing and screaming by the tenant on Mothers Day in May 2019 causing her to flee into a shelter, the witness remains in fear of the tenant. The tenant's only dispute to the witness' testimony was that the event in August of 2018 has not been proven in court. I acknowledge the landlord's burden in this case is to show that it's more likely than not the events occurred as described on a balance of probabilities; the

landlord does not need to prove a case beyond a reasonable doubt as required in a criminal proceeding.

I find that on the evidence provided, the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant contrary to sections 47(1)(d)(i) and (ii). Once again, I uphold the landlord's One Month Notice to End Tenancy for Cause.

Pursuant to section 55 of the Act I dismiss the tenant's application and grant the landlord an Order of Possession effective on June 30, 2019, the effective date stated on the landlord's Notice. Since that date has passed, I grant the landlord an Order of Possession effective two days after service upon the tenant.

As the tenancy is ending the tenant's application for the landlord to comply with the Act, regulations or tenancy agreement is dismissed.

As the tenant was not successful in his claim, he will not recover the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises 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 29, 2019

Residential Tenancy Branch