



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNDCT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

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*.

Preliminary Matter: Name Correction

The landlord testified that the tenant's application stated the landlord as the wrong entity. The landlord and the tenant both agreed to amend the application to state the correct name of the landlord. I herein amend the tenant's application to state to the correct name of the landlord, which is stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

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 tenant's claim for cancellation of the One Month Notice.

Preliminary Issue: Late service of tenant's evidence

The landlord objected to the admissibility of the tenant's evidence.

The landlord testified that they received the tenant's evidence five days before the hearing. Furthermore, I checked the Residential Tenancy Branch records for this hearing I determined that the Residential Tenancy Branch received the tenant's evidence five days before the hearing. The *Residential Tenancy Branch Rules of Procedure*, Rule No. 3.3 establishes that evidence intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

I find that the landlord and the Residential Tenancy Branch was not served in accordance with the *Residential Tenancy Branch Rules of Procedure* stated above.

Residential Tenancy Branch Rules of Procedure, Rule No. 3.12 states that evidence that was not served properly may be excluded if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. In this

matter, I find that the acceptance of the applicant's evidence only five days before the hearing would prejudice the landlord and breach the principles of natural justice.

The landlord was provided very little time to analyse the tenant's evidence and prepare for the hearing. In addition, the evidence was delivered after the landlord's deadline to submit responsive evidence had expired. For the foregoing reasons, I find that the acceptance of the applicant's evidence would prejudice the landlord and breach the principles of natural justice.

Accordingly, I exclude all of the tenant's evidence. The tenant's evidence will not be considered in my rendering of this decision.

Issue(s) to be Decided

Is the tenant entitled to an order for the 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 tenant started on April 1, 2019. The monthly rent was \$957.00 and the security deposit was \$487.50.

The landlord complained that the tenant was frequently drunk and he acted inappropriately when intoxicated.

The landlord testified that the tenant frequently interfered with the building's leasing staff while they were attempting to market the building. The landlord testified that the tenant would speak to prospective while he was drunk and this disturbed prospective tenants.

The landlord testified that on one occasion that tenant grabbed a female staff member in an inappropriate, sexual manner while the employee was conducting an open house.

The landlord testified that three women have made complaints about the tenant committing inappropriate conduct.

A female occupant in the building wrote a statement stating that she experienced a traumatic experience in the elevator with the tenant. She wrote that the tenant was “drunk and stinking of alcohol” and he “grabbed her hand in an aggressive manner.” The occupant stated that this incident shocked and scared her and she started taking the stairs rather than the elevator to avoid the tenant.

The landlord produced multiple photographs of the female occupant and the tenant in the elevator together. One photograph appears to show the tenant’s left hand in contact with the female occupant’s right hand. The tenant testified that he did not recall this incident but he did not grab her, or anyone else on the property. He testified that the photos showed that he was being friendly and that he was only holding his hand out to keep the door open.

The same female occupant also complained that the tenant went to her door late uninvited late at night multiple times and harassed her. This occupant stated that she was uncomfortable with the tenant’s conduct she moved out of the building.

The landlord also produced a written complaint letter from another occupant stating that the tenant was intoxicated and loudly playing the guitar in the building gardens between 10:00 pm and 11:00 pm.

Another occupant in the building wrote a complaint letter which stated that the tenant was frequently intoxicated and the tenant engaged in aggressive conduct and he made inappropriate comments while drunk.

The landlord testified that the tenant was involved in a fight on the property on May 31, 2019.

The landlord also testified that a female occupant and her father complained that the tenant was harassing them.

The landlord testified that the tenant was escorted onto the property by the police on June 7, 2019 after spending time in the drunk tank. The landlord testified that the tenant was so drunk that he did not know which apartment he lived in. The landlord testified that staff had to help the tenant into his apartment. The landlord provided a photograph of the tenant being escorted into the building by the police.

The landlord also testified that the tenant exposed himself in the community garden while intoxicated.

The landlord issued a final written warning letter to the tenant on June 18, 2019. However, the next day the landlord testified that they received another complaint the tenant was intoxicated and harassing an occupant.

The landlord posted the One Month Notice on the tenant's door on June 20, 2019. The One Month Notice checked the following as grounds for the 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.
 - Put the landlord's property at significant risk.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant testified that he did not start the fight. Rather, he states that he was the victim of an assault.

The tenant also testified that he was frequently intoxicated as the landlord claimed. The tenant stated that he has a concussion and he takes prescription medicine which makes him look intoxicated. The landlord responded by stating that they knew that the tenant was drunk because he had an overpowering odor of alcohol permeating from him.

The tenant testified that he did not assault or harass anyone at the building.

Furthermore, the tenant testified that he was not even at the property from June 5, 2019 to June 7, 2019 because he was staying at a friend's place during that time. The landlord testified that the photographs show the tenant being escorted onto the property by the police on June 7, 2019.

Analysis

A tenant may dispute the One Month Notice pursuant to section 47 of the *Act*. Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must

prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

The landlord's One Month Notice claimed the following basis for ending the tenancy for cause: (i) significantly interfered with or unreasonably disturbed another occupant or the landlord; (ii) the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; (iii) tenant has put the landlord's property at significant risk; and (iv) the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I will address each of the landlord's contentions separately.

Significantly interfered with or unreasonably disturbed another occupant or the landlord

I find that the landlord has provided sufficient evidence to satisfy their onus of proving that the tenant has significantly interfered with and unreasonably disturbed other occupants and the landlord. I find that there is substantial evidence that the tenant has been frequently intoxicated and he has engaged in loutish, offensive and harassing conduct on multiple occasions. I do not find the tenant's explanation that he not drunk but rather under the influence of prescription medication to be credible as the landlord and the complaint letters stated that they could smell alcohol permeating from the tenant. In addition, the tenant did not produce any admissible documentary evidence corroborating this medical explanation.

I find that the evidence shows that he has sexually assaulted an employee of the landlord, assaulted a female occupant by grabbing her hand, engaged in indecent behavior by exposing himself in the community garden and harassed multiple occupants and landlord employees by repeatedly making harassing comments. I find that this conduct constitutes an extreme interference and an unreasonable disturbance of other occupants and the landlord.

As such, I uphold the landlord's One Month Notice on the basis that the tenant has significantly interfered with and unreasonably disturbed other occupants and the landlord. Accordingly, I dismiss the tenant's application to cancel the landlord's one Month Notice.

Section 55 of the *Act* states that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord and the

application is dismissed, then the landlord is entitled to an order of possession if 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 does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective at 1:00 p.m. on August 31, 2019.

Conclusion

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

The tenant's application to cancel the One Month Notice is dismissed.

I find the landlord is entitled to an order of possession effective at **1:00 p.m. on August 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: August 20, 2019

Residential Tenancy Branch