



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OPC FFL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the Residential Tenancy Act.

The landlord applied for:

- An order of possession pursuant to section 55; and
- Recover of the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- Cancellation of the 1 Month Notice pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The agent OB (the “landlord”) primarily spoke on behalf of the landlords. The tenant VAM (the “tenant”) primarily spoke on behalf of both co-tenants.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other’s materials. Based on the testimonies I find that each party was served with the respective materials 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?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in May 2016. A security deposit of \$587.50 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a multi-unit complex with approximately 100 individual units in two buildings with common walking and garden areas.

There have been several previous hearings regarding this tenancy under the file numbers on the first page of this decision. The most recent hearing was conducted on January 17, 2019 and dealt with the cancellation of a 1 Month Notice to End Tenancy for Cause dated November 29, 2019.

The landlord issued the present 1 Month Notice on July 15, 2019. The notice provides the reason for the tenancy to end as:

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 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 or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Under the details of cause the landlord writes, in part:

Continuing to harass, bully and antagonize another tenant of [landlord].
Exhibiting aggressive behavior creating fear of physical harm of another tenant at [landlord's complex].

The tenants submit that the present 1 Month Notice is issued for substantially the same reasons as the earlier notice of November 29, 2019 and thus the matter has already been conclusively decided.

Among the evidence submitted by the landlord are a written complaint pertaining to the tenant's behaviour on January 8, 2019, a warning letter issued to the tenants by the landlord in response to the written complaint and a complaint letter dated July 12, 2019.

The landlord describes the behaviour of the tenants as bullying and aggressive. They say that the tenants have victimized one particular occupant of the rental complex SL, by verbally berating them, riding a motorized scooter in a dangerous fashion causing the other occupant to fall, and hostile interactions. The landlord said that they believe the tenants' actions are retaliatory in response to a separate proceeding that ended the tenancy of a resident who was friends with the tenants. The landlord believes that the tenants have targeted SL as they have a visible disability and wrote a letter in support of the landlord's actions, as did many of the other occupants of the rental complex.

The occupant SL appeared as a witness and gave evidence regarding the interactions with the tenants. The occupant began residing in the rental building in January 2016. They said that the hostile behaviour of the tenants began in or about May 2018 after they had supported the landlord's actions in a separate proceeding against another occupant of the building. The witness testified that since that time the tenants have aggressively rode their motorized scooters near them causing them to fall and suffer injuries. The witness said that the tenants have made threatening comments and informed them they were not permitted to use the common areas of the rental complex. The witness said they believe the tenants have vandalized their property and attribute a broken gate to the tenants.

The tenants dispute the landlord's characterization of them and submit that they have not acted in an improper or outright hostile manner against the witness. They submit that while there have been heated interactions with the witness these instances have not been one-sided or solely instigated by the tenants. The tenants say that they have always driven their motorized scooter with care and caution and any injuries suffered by the witness as a result of falling is not attributable to them.

Analysis

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue on which a previous binding decision has been made involving the same parties.

The tenants submit that the present 1 Month Notice dated July 15, 2019 is issued on the same grounds as the earlier 1 Month Notice of November 29, 2019. The tenants submit that the evidentiary basis for both notices is identical and that a final and binding decision was made on January 22, 2019 under the file numbers on the first page of this decision.

I do not find the tenants' submission that this matter has been previously decided to be convincing. The landlord submitted evidence pertaining to incidents which occurred between the tenants and the witness in January and July, 2019, after the issuance of the earlier 1 Month Notice. The earlier decision allowed the cancellation of the 1 Month Notice of November 29, 2019 but does not bar the landlord from issuing further notices should a basis arise. I find that the present applications pertaining to the 1 Month Notice of July 15, 2019 has not been previously conclusively decided and it is open to adjudication.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, 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.

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 at hand the landlord must demonstrate that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, or that the tenants or a person permitted on the property by the tenants have engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord or jeopardize a lawful right or interest of another occupant or the landlord.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. While the undisputed evidence is that there have been unpleasant interactions between the tenants and the witness, I do not find that there is sufficient evidence to conclude that the behaviour of the tenants gives rise to an end of the tenancy.

The landlord's evidence consists primarily of complaints made by one occupant in the rental complex. While there is a written letter from an independent witness to one interaction between the tenant and the occupant, I do not find that there is sufficient evidence that there has been a significant interference or disturbance such that it would lead to a basis for this tenancy to end.

The testimony of the witness and written complaint submitted into written evidence by the landlord details an ongoing acrimonious relationship between the witness and the tenants. The tenants dispute the landlord's characterization of the relationship as one-sided and submit that the witness is an equal participant in these hostile interactions. I find that there is insufficient evidence on the landlord's part to show that their interpretation of events is more likely than that of the tenants. In such a case, the landlord has not met their evidentiary burden on a balance of probabilities, that it is more likely than not.

I find much of the submissions of the landlord, including the testimonies of the landlord and their witness and the written materials consist of subjective complaints, conjecture about the motivations of the tenants and general accusations that have not been proven. I do not find the landlord's presumption that the tenants have vandalized the witness' rental suite to be anything more than an undetermined accusation. I find the evidence of one heated exchange in January 2019 witnessed by another occupant to be insufficient to show that there has been an unreasonable disturbance initiated by the tenants. I find the submission of a police report to be of little value as any member of the public is able to file a complaint and it is of little value as to the conduct of the tenants.

I do not find the evidence of near collisions between the tenant and the witness to be sufficient to find that the tenants have seriously jeopardized the health or safety of other occupants. The landlord submits that the witness has suffered multiple injuries but has provided little evidence in support of their submission. The landlord submits that the tenant has driven their motorized scooter in an aggressive manner causing the witness to fall but I find there is insufficient evidence in support of this position. The tenant

explained that a motorized scooter is not able to move off of the paved footpath and while they maneuver around the witness there is a limit to how wide a berth they are able to provide. I find the tenant's submission to be reasonable and in accordance with what would reasonably be expected under the circumstances. I do not find the landlord's submission that the tenant is driving their scooter at a high speed and dangerously close to the witness and their dogs to be established on a balance of probabilities in the evidence.

The landlord has also asked that I draw a negative inference from the fact that the tenants have failed to call any other occupants of the rental building as witnesses to attest to their good behaviour.

I decline to draw a negative inference based on the absence of witnesses. As set out above, and in accordance with Residential Tenancy Rule of Procedure 6.6 the onus lies with the applicant to establish their claim on a balance of probabilities. In the present matter the onus lies with the landlord to establish on a balance of probabilities that there is cause for this tenancy to end. Evidence is not measured by volume or the number of witnesses a party chooses to call. I find the landlord's submission that a negative inference be drawn from the absence of witnesses in support of the tenants to be contrary to the principles of procedural fairness.

Furthermore, any witnesses called to attest to the character of the parties is ultimately irrelevant to the matter at hand. The subject matter of this application is the 1 Month Notice issued by the landlord. The character of the parties, or the number of personal supporters they may have is of no relevance to the subject matter.

While I find that there is an ongoing acrimonious relationship between the tenants and the witness, I am not satisfied that the evidence shows the tenant has unreasonably disturbed another occupant, seriously jeopardized the lawful rights of another occupant or engaged in any illegal activity such that it gives rise to a reason to end this tenancy.

Accordingly, I allow the tenant's application to cancel the 1 Month Notice.

Conclusion

The tenants' application to cancel the 1 Month Notice is allowed. The 1 Month Notice of July 15, 2019 is cancelled and of no further force or effect.

The landlord'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: September 19, 2019

Residential Tenancy Branch