



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHISHAUN HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated July 30, 2019 ("1 Month Notice"), pursuant to section 47.

The landlord's agent, AW ("landlord"), the landlord's lawyer, the two tenants, male tenant ("tenant") and "female tenant," and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the director of the landlord company named in this application and that he had authority to speak on its behalf. The landlord confirmed that his lawyer had permission to represent the landlord company. The tenants confirmed that their agent had permission to speak on their behalf. This hearing lasted approximately 77 minutes.

The landlord's lawyer confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' agent confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence.

The tenants' agent confirmed receipt of the landlord's 1 Month Notice on July 30, 2019, by way of posting to the tenants' rental unit door. The landlord's lawyer confirmed that the notice was served on the above date using the above method. The notice indicates an effective move-out date of August 31, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 1 Month Notice on July 30, 2019.

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

Both parties agreed to the following facts. This month-to-month tenancy began on December 1, 2007. Monthly rent in the amount of \$865.00, which includes \$20.00 for parking, is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenants and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement.

The landlord issued the 1 Month Notice for the following reasons:

- *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.*

The landlord's lawyer stated that on April 16, 2018, the tenant shouted racial slurs and threatened to harm another occupant as he chased him down the hallway of the rental building. The landlord provided photographs taken from video surveillance as well as witness letters regarding this incident. The landlord testified that on July 11 and 12, 2019, the tenant made two death threats towards him if he touched the tenant's car. The tenant testified that he made these two death threats because the landlord towed his car and he did not want him touching his car. The landlord claimed that he reported these threats to the police.

The landlord's lawyer confirmed that on April 8, 2019, the male tenant defecated in the common area of the rental property. The tenants' agent agreed that the tenant defecated in the elevator one time, due to incontinence from previous medical surgeries, but the tenant cleaned it up. The landlord provided photographs of the tenant urinating and defecating, taken from video surveillance. The tenants' agent denied that the tenant urinated in the common areas of the rental property.

The landlord's lawyer claimed that on June 5, 2019, the tenant stole flowers of other occupants at the rental property and a letter was provided by the landlord, who

confirmed that the tenant apologized in August 2019. She explained that on July 22, 2019, a complaint was made by another occupant about the tenant stealing and scaring people playing a game. She maintained that from December 19, 2018 to July 31, 2019, the tenant allowed unauthorized guests to access the rental building, leaving the front door of the building ajar with an item, sleeping in the common area lounge and hallway, urinating in the stairwell, and setting off the fire alarm. The landlord provided letters and emails from occupants and the landlord, regarding same. The tenants' agent denied allowing unauthorized guests at the rental property, stating that the tenants are entitled to have guests visit and stay overnight, and that one male guest brings the tenant his medications and borrows his car.

The landlord's lawyer confirmed that the tenant engaged in domestic abuse against his wife, the female tenant, such that the police were called three times in the last two years. The landlord provided a police file number for an incident on May 28, 2018, when another occupant called the police, after she claimed the male tenant beat the female tenant and deprived her of food. The landlord's lawyer said that on August 20, 2018, the landlord called the police and reported the tenant throwing things around at the rental unit.

The landlord's lawyer stated that on August 21, 2018, the landlord provided letters to the tenants' agent regarding the landlord's concern for the female tenant who was being starved and abused by the tenant. The tenants' agent and the female tenant denied any domestic abuse and starvation by the tenant. The tenants' agent claimed that the police came twice to check on the female tenant, who has multiple sclerosis, and does not eat properly. The tenants' agent denied any criminal charges against the tenant and confirmed that he would not allow the female tenant, who is his sister, to be harmed by the tenant. The tenants' agent denied that the tenant is a drug addict and maintained that he does not buy or sell drugs, he only smokes marijuana, which is legal.

Analysis

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenants received the notice. The tenants received the 1 Month Notice on July 30, 2019 and filed their application to dispute it on August 7, 2019. Therefore, they are within the time limit under the *Act*. Therefore, the burden shifts to the landlord to prove the reasons on the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for valid reasons. I find that the tenants significantly interfered with and unreasonably disturbed the landlord and other occupants in the rental building and caused serious jeopardy to the health, safety and lawful rights of the landlord and other occupants.

I accept the testimony of the landlord and the tenant who both confirmed that the tenant made two death threats towards the landlord in July 2019, resulting in police attendance at the rental property. I find that the tenant's behavior caused serious jeopardy to the health and safety of the landlord. I accept the evidence of both parties that the tenant defecated in the common elevator of the rental building. I find that this caused significant interference and unreasonable disturbance to the landlord and other occupants in the rental building.

I accept the numerous letters and emails provided by the landlord, indicating that the tenants and their guests caused loud fighting and noise at the rental property over a lengthy period of time dating back to April 2018 and continuing into July 2019. I find that this caused significant interference, unreasonable disturbance and serious jeopardy to the safety of the landlord and other occupants.

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.*

Accordingly, I dismiss the tenants' application to cancel the landlord's 1 Month Notice, without leave to reapply. I find that the landlord's 1 Month Notice, dated July 30, 2019, complies with section 52 of the *Act*.

I find that this tenancy ends pursuant to an order of possession effective at 1:00 p.m. on October 31, 2019. Neither party raised any issues regarding outstanding rent, so I find that the tenants are entitled to possession of the rental unit until the end of the month. I also find that since both tenants are disabled and have medical conditions, they may require additional time to vacate the rental unit.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective at 1:00 p.m. on October 31, 2019. 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: October 02, 2019

Residential Tenancy Branch