



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNNYSIDE VILLAS SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 14, 2019 ("1 Month Notice"), pursuant to section 47.

The landlord's two agents, landlord JM ("landlord") and "landlord DC," the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 75 minutes. The tenant and her advocate spoke for most of the hearing time.

The landlord confirmed that she was the manager and landlord DC confirmed that he was the vice president of the board of directors, both employed by the landlord company named in this application and that both had authority to speak on its behalf. The tenant confirmed that her advocate had permission to speak on her behalf.

The landlord intended to call a number of witnesses to testify at this hearing, who were excluded from the outset. At the end of the hearing, the landlord confirmed that she did not want to call these witnesses, as she did not want to wait for an adjournment of this hearing to a future date, since the hearing time ended after 75 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's advocate 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 tenant's application and the tenant was duly served with the landlord's evidence.

The tenant's advocate confirmed receipt of the landlord's 1 Month Notice on August 18, 2019, by way of posting to the tenant's rental unit door. The landlord confirmed that the notice was served on August 14, 2019, using the above method. The notice indicates an effective move-out date of September 16, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on August 18, 2019.

The tenant confirmed that she wanted to proceed with the hearing and for me to make a decision, rather than agree to a settlement with the landlord. The tenant was given ample time to make this decision and speak to her advocate privately during the hearing. I answered all of the tenant's and her advocate's questions regarding the settlement and hearing procedures. The tenant was cautioned about the possible outcomes of my decision repeatedly and chose to pursue a hearing of this matter.

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 March 1, 2014. Monthly rent in the amount of \$523.00 is payable on the first day of each month. A security deposit of \$150.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement.

Both parties agreed that the landlord issued the 1 Month Notice to the tenant for the following reasons:

- *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;*
 - *put the landlord's property at significant risk.*
- *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.*

The landlord testified regarding the following facts. The landlord company named in this application is a non-profit housing society for low-income seniors. It houses people aged from 55 years to over 100 years old. This is not a health care facility, so generally occupants enter the housing in good health but develop physical and cognitive problems over time. Over the last few years, the landlord has upgraded its CCTV security camera surveillance system and secured its fire escapes, in order to ensure the safety and security of all occupants in the rental building. The landlord has the CCTV system monitoring the front door at the rental building and asks its occupants to use this front door when entering and exiting the building, rather than the emergency fire exits. The landlord has conducted safety and security seminars in conjunction with the police, for occupants at the rental building. The landlord has established policies regarding the use of the front door, the fire exits, and the scooter room door which is near the fire escape back door at the rear of the rental building.

The landlord stated the following facts. The tenant has violated the landlord's policies regarding use of the doors at the rental property. The tenant was captured on the CCTV system as plugging the scooter room interior door and the outside fire exit back door with cardboard pieces, to hold the doors ajar. The landlord received complaints from other occupants in the rental building, who provided witness letters to this effect. The landlord put up vandalism signs regarding obstructing the doors in order to warn occupants from engaging in this behaviour. Complaints regarding the tenant occurred for a few years, but the landlord had no proof until the CCTV system was installed and she saw the tenant on the CCTV system on many occasions plugging the doors with cardboard. The tenant was previously using keys to access the scooter room and fire escape doors, as these doors lock when closed. The scooter room stores scooters for occupants with disabilities and only these people have access to the room, as required. The landlord then changed the locks, forcing occupants to use the monitored front door at the rental building. On August 13, 2019, the landlord confronted the tenant with the cardboard pieces she found in the doorways and the tenant told her that she had a sore foot and could not walk down the hall. The landlord issued the 1 Month Notice to the tenant on August 14, 2019, the day after she confronted the tenant.

The tenant testified regarding the following facts. She was given the keys to her apartment, the front door and the three back doors when she moved into the rental building and she was able to use all doors freely. She also used a scooter room door, which is an interior door, when she moved in. She used these doors for 5.5 years and used her keys, while seeing other people put cardboard and tape to hold the doors ajar, which she did not do because she had keys. On August 7, 2019, the landlord changed the locks to the scooter room and the rear fire exit doors, so she could not access these

doors with her keys. Between August 7 and 13, 2019, she used cardboard pieces to hold the scooter room interior door ajar, so it would not lock on her. She did not do anything to obstruct the outside fire exit door. When she threw garbage outside and the rear outside door locked on her, she walked around to the front of the building to enter through the front door.

The tenant's advocate stated the following facts. The tenant suffers from anxiety, osteoarthritis, plantar fasciitis, and agoraphobia. The tenant's agoraphobia is an invisible disability, which makes her fearful of being around other people, and the tenant waits to enter the building when others are around. The tenant provided written evidence regarding this condition with her application. The landlord is discriminating against the tenant based on her disabilities, by taking away her keys and changing the locks to the scooter room door and the rear doors, as the tenant is unable to walk long distances. The tenant should have access to the scooter room like other occupants with disabilities, as noted in the tenant's evidence, which includes the landlord's policies regarding the scooter room.

The tenant's advocate confirmed the following facts. Currently, the tenant has to walk far to use the front door, after throwing out her garbage, which is near the rear building doors. The tenant using cardboard to hold the scooter room door ajar is not a big issue because it is an interior door. It does not jeopardize the safety of the building when it is not an exterior door. This is the tenant's third eviction notice, which was not issued by the landlord in good faith. The parties had a hearing in 2015 and have an upcoming hearing at the end of November 2019, for two other notices to end tenancy. The tenant provided photographs and descriptions with her application, to show the various doors and distances in the rental building. The tenant disputes the landlord's witness letters, saying the information submitted is untrue.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on August 18, 2019 and filed her application to dispute it on August 28, 2019. Therefore, she is 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 tenant caused serious

jeopardy to the health, safety and lawful rights of the landlord and other occupants and put the landlord's property at significant risk.

I accept the testimony of the landlord and the tenant who both confirmed that the tenant placed cardboard pieces to hold the interior door ajar to the scooter room at the rental building. Even though this may have been for a short period of time from August 7 to 13, 2019, as claimed by the tenant, it is a risk for the landlord and the rental building occupants. Although this is an interior door to the scooter room, it puts the scooters inside that room at risk of being stolen, vandalized and destroyed. The elderly occupants in the rental building, some of whom are over 100 years old, rely on these scooters as forms of transportation, as they are disabled. It allows them to travel to medical appointments, obtain medications, and conduct other activities of daily living. I find that the tenant's behavior caused serious jeopardy to the health and safety of the landlord and other occupants in the rental building. I also find that it puts the landlord's property at significant risk of theft, vandalism and destruction.

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 tenant's application to cancel the landlord's 1 Month Notice, without leave to reapply. I find that the landlord's 1 Month Notice, dated August 14, 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 tenant is entitled to possession of the rental unit until the end of the month.

Conclusion

The tenant's 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 tenant 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 29, 2019

Residential Tenancy Branch