



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the tenant to cancel a Notice to End Tenancy for Cause (Notice) dated October 28, 2019 with an effective date of November 30, 2019.

The tenant, representatives for the landlord, and the landlord's witness participated in the teleconference hearing.

Both parties acknowledged receiving all the evidence of the other, as has been provided to this proceeding. The parties were provided opportunity to mutually resolve this dispute to their mutual satisfaction, to no avail.

I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is there *sufficient* cause to end the tenancy?

Should the landlord's Notice to End Tenancy be cancelled? If not, is the landlord entitled to an Order of Possession pursuant to Section 55(1) of the Act?

Is the Notice to End Tenancy of this matter valid in accordance with Section 52 of the Act respecting form and content?

Background and Evidence

The parties were informed that the burden of proof in this matter lies with the landlord to

prove, on balance of probabilities, they issued a valid One Month Notice to End Tenancy for sufficient reason(s) as prescribed by the Act. The relevant evidence in this matter is as follows. This tenancy started in 2015 under a residential tenancy agreement. The landlord operates the residential property as supportive housing with a complement of workers. Rent is payable in advance on the 1st day of each month. On October 28, 2019, the landlord served the tenant with a Notice to End Tenancy for Cause which the tenant has disputed within the prescribed time to do so in accordance with the Act. The Notice indicates the reasons for ending the tenancy are as follows pursuant to **Section 47** of the Act:

- (1) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- (2) the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- (3) 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 or the landlord

Landlord's Evidence

The landlord testified that before, but primarily within, 2019 the tenant has shown a "complete disregard" of rules and policies for the residential property which the landlord has established to provide and ensure a safe and respectful environment for the approximate 100 occupants, and the landlord's workers (the landlord). The landlord provided copies of four(4) warning letter issued the tenant between May 07 and October 28, 2019 addressing disrespectful and abusive conduct toward other tenants and workers, repeated excessive noise from loud music, bullying behaviour, harassment of support and kitchen staff, and all (excepting the last letter) requesting the tenant to modify their behaviour and conduct so as not to jeopardize their tenancy. The latter warning letter mirrored the third letter and was for breaching the tenancy agreement, for disrespectful conduct and excessive noise in collateral support of the Notice to End Tenancy for Cause of the same date. The landlord provided documentation of a complaint of disrespectful and racial slur toward a kitchen staff person, and written and verbal complaints about the tenant playing loud music with vibrating bass in their rental unit, primarily disturbing an adjacent tenant. The landlord stated they have heard the tenant playing music so loud that it could be heard throughout, and when the landlord

attempted to intervene the music was so loud the tenant did not respond to knocking on their door. In a different incident the neighbouring tenant called police who attended. The tenant and landlord confirmed the intervention by Police. The landlord provided a 'Good Neighbour Agreement' dated February 21, 2018, signed and multiply-initialled by the tenant agreeing to be responsible for their behaviour and conduct, but specifically to not play loud music and be respectful of the quiet enjoyment of other tenants. The landlord stated that there is also posters in the building lobby reminding residents of their 'good neighbour conduct' principles.

The landlord also presented evidence claiming that on October 22, 2019 the tenant accosted and then assaulted their neighbouring tenant DD, whilst the two were at the lobby elevators.

One of the landlord's workers, **CG**, appeared as a witness for the landlord:

Under affirmed declaration, the witness testified that on October 22, 2019 they were situated behind a viewing window onto the elevators and heard loud arguing. They viewed the tenant and their neighbour, DD, in front of the elevators and saw the neighbour falling into the adjacent wall. The witness stated they immediately intervened to stop what appeared as aggression on the part of the tenant by yelling, "stop, whoa, whoa". The witness stated they could not see what occurred prior to DD falling into the wall, however, from what they did see determined that DD had been accosted, and upon consequently viewing the video surveillance footage came to learn that the tenant had struck DD with what appeared to be a punch. The witness stated the video footage confirmed to them the tenant had struck DD forcing them toward the wall.

The landlord provided successive photo images of the incident into evidence showing a progression of the above events.

Tenant's Response

The tenant stated they feel the landlord has been unduly critical of them and their past behaviour. They feel the landlord has not been fair in some of their approach to him, especially in the latter period of the tenancy as workers have left and new ones replaced them. The tenant stated they feel their past behaviour was in the past and any incidents were addressed to everyone's satisfaction. The tenant's testimony effectively denied the landlord's claims of disrespectful or aggressive conduct on their part.

The tenant acknowledged receiving the landlord's warning letters and complaints of excessively loud music. They stated that after the verbal and written reminders they "experimented" with their speakers and subwoofer with a view to soften their effect so as not to disturb others. However, after additional complaints they determined to simply shut off their subwoofer and use only their speakers and headphones, albeit too late to avert the landlord's Notice to End Tenancy of this matter. The landlord and tenant acknowledged one subsequent incident in the early morning of November 17, 2019, in which the tenant explained falling asleep with their headphones and the jack detaching from their music system, causing a reported disturbance and garnering yet another complaint from the neighbouring resident. The tenant stated his behaviour has changed and moving forward will be more compliant with the rules and policies for the residential property.

In response to the landlord's evidence of an assault toward another resident, the tenant acknowledged the related incident and was given opportunity to ask questions of the landlord's witness and respond to their evidence respecting the incident. The tenant does not dispute they physically assaulted their neighbouring resident and described their version of events as follows.

They and DD were at the elevators of the third floor. The tenant stated DD had been critical of the quality of his speakers and their sound, which the tenant stated ultimately "provoked" him to act aggressively toward DD. The tenant stated he shoved DD then, "jabbed him with my left fist, which made him fall against the wall". The tenant described himself being 6 foot 2 inches and stocky, while DD obviously smaller and older. The tenant stated he didn't think he harmed DD; and that had he really meant to harm him, "things would have been worse for (DD)". The tenant stated he and DD had worked through their differences and that neither DD, nor the Police, despite their attendance following the incident, had laid a charge of assault.

The tenant stated they were not satisfied with the landlord's handling of the occurrence because the landlord did not ask them for, "their side of the story".

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I find the tenant has clearly been challenged by some of the rules and policies of the landlord as the tenancy progressed. I am mindful the tenant's residency appears to have been relatively uneventful for the early period of their tenancy, or perhaps arising issues better tolerated by the landlord, until the latter period. I accept the landlord's global responsibility toward all residents of their property and their growing distrust of the tenant's conduct as being the landlord's paramount considerations in seeking to end this tenancy.

On the preponderance of evidence and balance of probabilities, I find that the evidence effectively establishes that the tenant has not wholly complied with the terms and conditions of their supported housing tenancy, and effectively the contractual terms to which the tenant agreed to in order to reside on the landlord's property. But moreover, I am concerned that the tenant is comfortable in their knowledge they assaulted their neighbouring tenant only to the point of concern, or lasting physical harm. And, I am equally concerned it may not have been effectively communicated to the tenant the gravity of their aggression and physical assault upon another resident of greater age, lesser stature, and therefore the prospect for a dire or unintended outcome, as a result.

I find that the notice to end tenancy is valid on the basis that the tenant has unreasonably disturbed other occupants and the landlord, particularly where the tenant has unreasonably antagonized their neighbouring tenant with repeated excessive noise from their subwoofer even after oral and written reminders.

I find the landlord's witness in respect to the assault gave testimony that they directly experienced the tenant's assault on resident D.D. and the tenant did not deny the occurrence. I am satisfied the witness presented clear, credible testimony, and the tenant was offered an opportunity to ask questions of the witness or otherwise respond to their evidence. In this regard, I find the evidence is that the tenant has seriously jeopardized the health and safety of another occupant, and adversely affected the quiet enjoyment, safety and physical well-being of another occupant.

I find that the landlord's Notice to End Tenancy dated October 28, 2019 complies with the form and content required of the Notice pursuant to Section 52 of the Act. Therefore, in upholding the landlord's Notice, and pursuant to Section 55(1) of the Act, I accordingly must grant the landlord an Order of Possession.

As a result of all the above, the tenant's application is **dismissed**, without leave to reapply. The tenancy will end in accordance with my Order.

Orders

I grant the landlord an **Order of Possession effective two days from the day it is served on the tenant.** Although the landlord has some discretion as to when they serve the Order on the tenant, the tenant must be served the Order if the landlord seeks reliance on it. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenant's application is dismissed. The landlord is given an Order of Possession in the above terms. The tenancy will end in accordance with the Order.

This Decision is final and binding.

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: December 19, 2019

Residential Tenancy Branch