



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 127 SOCIETY FOR HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, LRE

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a One Month Notice to End Tenancy for Cause.

The Tenant stated that the original Dispute Resolution Package was personally served to an agent for the Landlord, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were received by the Landlord on November 01, 2019.

The Tenant amended the Application for Dispute Resolution to include an application to dispute a One Month Notice to End Tenancy for Cause and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit. The application to dispute a One Month Notice to End Tenancy for Cause is a duplication of the first application.

The Tenant stated that the Amendment to the Application for Dispute was left in the Landlord's mailbox, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were received by the Landlord on November 20, 2019.

Each party submitted evidence to the Residential Tenancy Branch, which was served to the other party. The evidence was accepted as evidence for these proceedings. Although all of this evidence was reviewed, it was only referred to in this decision if it was directly relevant to my decision.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The Tenant has identified issues on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I will consider the Tenant's application to cancel a One Month Notices to End Tenancy, as that is the most urgent issue before me. The Tenant's application for an Order suspending or setting conditions on the Landlord's right to enter is dismissed, with leave to re-apply. The Tenant retains the right to file another Application for Dispute Resolution for that matter.

Issue(s) to be Decided

Should a Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2018 and that rent is due by the first day of each month.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause, dated October 28, 2019, was posted on the Tenant's door on October 28, 2019. The Tenant acknowledged receipt of this Notice to End Tenancy.

The reasons for ending the tenancy cited on the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has put the Landlord's property at significant risk; and that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health, safety, or lawful right of another occupant or the landlord.

The Notice to End Tenancy declares that the rental unit must be vacated by November 30, 2019.

In support of this Notice to End Tenancy the Landlord submits that at approximately 3:20 p.m. on October 17, 2019 the Tenant behaved inappropriately to another occupant of the residential complex when they were in the elevator.

In a written statement a community worker who witnessed part of the incident on the elevator declared that:

- when the elevator door opened another occupant of the residential complex (Occupant) was standing with his back against the wall, with his arms outstretched, asking what he had done;
- the Tenant, who exited the elevator first, was yelling;
- she heard the Tenant call the Occupant a “goof” and ask him to “get out of my face”;
- as the Occupant exited the elevator, he again asked what he had done;
- she was concerned about the Tenant’s anger;
- she intervened by asking the Occupant to leave the area; and
- the Tenant left the area on his own accord.

In a written statement the Occupant declared that:

- while he was waiting for the elevator, he could hear the Tenant yelling at his dog from somewhere else in the building;
- he entered the elevator when it arrived;
- the Tenant also entered the elevator;
- the Tenant called him a “goof”, told him stay away, and threatened to have him killed; and
- he was also angry, and he also called the Tenant a “goof”.

In response to the incident in the elevator the Tenant submits that:

- he was on the elevator when the Occupant entered;
- he told the Occupant that he believed the Occupant had drugged him several months earlier;
- after he made this accusation the Occupant began yelling and swearing at him;
- he responded by raising his voice and telling the Occupant to stay away from him; and
- he never threatened to harm the other Occupant.

The Advocate for the Tenant submits that the version of events in regard to the incident in the elevator provided by the other Occupant is not more credible than the version of events provided by the Tenant. The Advocate submits that the testimony of the Witnesses for the Tenant establishes that the Occupant in the elevator had previously engaged homophobic, racist, and aggressive behaviour.

The male Witness for the Tenant stated that:

- he has been a resident of this residential complex for 16 years;
- he knows the Occupant;
- approximately 5 or 6 years ago he overheard the Occupant make racist remarks about “white people”;
- he has heard the Occupant make homophobic comments; and
- he has seen the Occupant lose his temper and speak in an aggressive manner to other people.

The female Witness for the Tenant stated that:

- she was a resident of this residential complex until July of 2019;
- she knows the Occupant;
- on one occasion the Occupant repeatedly came to her door, yelling and banging loudly;
- she would not open the door, but she recognized the Occupant’s voice;
- on this occasion she was holding money the Occupant had asked her to hold for him, although she does not believe that was why he was banging on her door;
- on another occasion someone removed a wreath from her door;
- a neighbour told her the wreath was removed by the Occupant;
- on another occasion someone covered her door with shaving cream; and
- a third party told her the Occupant was responsible for covering her door with shaving cream.

In support of this Notice to End Tenancy the Landlord submits that:

- at approximately 3:40 p.m. on October 17, 2019 two agents for the Landlord went to the Tenant’s rental unit to discuss the incident that had occurred on the elevator;
- as they approached the open door of the rental unit, they heard the Tenant say “that fuckin nigger, that black bastard I’m gonna get him and put him in the ground”;

- there was no music in the background when they heard the Tenant speak; and
- they spoke with the Tenant about the incident in the elevator and he assured them he would stay away from the Occupant.

In response to the interaction at approximately 3:40 p.m. on October 17, 2019, the Tenant submits that he was singing a well known rap song when the two agents for the Landlord's approached his door.

In support of this Notice to End Tenancy the Landlord submits that:

- approximately two hours after the agents for the Landlord spoke with the Tenant in his rental unit on October 17, 2019, the Tenant was causing a disturbance in the halls of the residential complex;
- he was yelling and threatening to harm others;
- even if the Tenant "blacked out" during these disturbances, his behaviour still disturbed others; and
- the Tenant has shown no remorse for his behaviour on October 17, 2019.

In response to the allegations that he created a disturbance later in the evening of October 17, 2019, the Tenant submits that:

- he now understands that he created a disturbance on the ninth floor;
- he does not know if he created a disturbance on any other floor;
- he has no recollection of this incident; and
- he "blacked out" during that period of time due to prescription drugs, alcohol, and emotional stress.

In a written statement an employee of the Landlord declared that at approximately 06:30 p.m. on October 17, 2019 he overheard the Tenant threatening to "beat people up in the building". He stated that the next day several occupants of the residential complex reported hearing the Tenant "ranting" that night.

The Landlord submitted an incident report in which an occupant of the residential complex reported that on October 17, 2019 the Tenant was on the ninth floor yelling and knocking on doors. He stated that he was afraid to answer his door.

The Landlord submitted an incident report in which an occupant of the residential complex reported that on October 17, 2019 the Tenant came to the door of his unit, at which time he was screaming and making racial slurs.

The Advocate for the Tenant submits that although the disturbance the Tenant created on the ninth floor was inappropriate, it does not justify ending this tenancy. She submits that he should just be given a “stern warning” given that there were no problems with his tenancy prior to October 17, 2019.

In support of this Notice to End Tenancy the Landlord submits that the Tenant disturbed another occupant of the residential complex by yelling and swearing on October 21, 2019.

The Landlord submitted an incident report from the person living in unit 701, who reports that in the early morning hours of October 21, 2019 he was awakened by the Tenant. This individual declared that he could hear the Tenant yelling and swearing for approximately 45 minutes.

The Tenant denies making noise on this date.

The Landlord and the Tenant agree that prior to October 17, 2019 the Tenant made no racist comments and he was not involved in an altercation with any other occupant of the rental unit.

Analysis

Section 47(d) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or put the landlord's property at significant risk.

When a landlord wishes to end a tenancy pursuant to section 47 of the *Act*, the landlord bears the burden of proving they have grounds to end the tenancy.

On the basis of the undisputed evidence, I find that on October 17, 2019 there was a verbal altercation in the elevator between the Tenant and the Occupant. I find that there is insufficient evidence to establish that the Tenant threatened to harm the occupant during this altercation. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Occupant's testimony that there was a threat or that refutes the Tenant's testimony that no threats were made.

I find that there is insufficient evidence to establish that the Tenant was solely responsible for the altercation on the elevator. In reaching this conclusion, I was influenced by the fact there is no evidence from anyone who was in the elevator during the altercation. I therefore find it entirely possible that the Occupant responded aggressively to the Tenant's allegation that the Occupant drugged him, as the Tenant contends. I find this reaction to be highly credible, particularly if the Occupant did not drug the Tenant.

In adjudicating this matter, I have considered the evidence a community worker who witnessed the parties exit the elevator. Although she concluded the Tenant was angry when he exited the elevator, I find that she could not know whether the Occupant had also spoken in anger during the elevator ride.

Although I accept the community worker's evidence that the Occupant seemed to not understand why the Tenant was angry, I find that response to be a reasonable response from someone who had recently been accused of drugging the other party, particularly if the allegations were untrue.

In adjudicating this matter, I was influenced by the fact the Occupant did not attend the hearing to dispute the Tenant's submission that he was also yelling during the altercation in the elevator.

In adjudicating this matter, I have considered the testimony of the Tenant's witnesses, both of whom state that they have witnessed the Occupant behaving aggressively in the past. I find that this evidence lends some credibility to Tenant's testimony that the occupant was also yelling and swearing during the incident.

As there is insufficient evidence to establish that the Occupant was not actively engaged in the verbal altercation in the elevator; there is insufficient evidence to establish that the Tenant threatened the Occupant in the elevator; and the Occupant is also known to behave aggressively, I cannot conclude that the Occupant was unduly disturbed by the verbal altercation.

Regardless of whether the Occupant was unduly disturbed by the altercation, I find that the Tenant's anger was sufficient to cause the community worker to intervene. I find that behavior of this nature constitutes an unreasonable disturbance.

On the basis of the undisputed evidence, I find that on October 17, 2019 the Tenant was overheard making racial slurs while he was inside the rental unit. On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I accept that the Tenant was singing a rap song when he uttered the racial slurs. Although the agents for the Landlord did not hear any music when the words were uttered, I find it is not uncommon for people to sing songs to themselves, without being accompanied by music.

Although the Tenant made the racial slurs while he was inside his own rental unit, the undisputed evidence is that his door was open, and he was speaking loudly enough to be overheard by people outside of his rental unit. Regardless of whether the Tenant was expressing his own personal views or he was repeating inappropriate musical lyrics, I find his behaviour was inappropriate. I find that hearing such offensive comments would disturb most reasonable people, even if some people find them acceptable in a rap song.

On the basis of the written statements submitted by the Landlord I find that the Tenant disturbed several other occupants of the residential complex in the early evening of October 17, 2019 by screaming, knocking on doors, and making racial slurs. As the Tenant is unable to recall these incidents due to his consumption of prescription drugs and alcohol, I accept that the disturbances occurred as described by those witnesses. I find those disturbances highly inappropriate, particularly because they included racial slurs.

I find that on in the early morning hours of October 21, 2019 another occupant of the residential complex was awakened by the Tenant yelling and swearing in his rental unit, which lasted approximately 45 minutes. Although the Tenant denies creating this disturbance, I find that the evidence of the seemingly unbiased resident who reported the disturbance is more compelling than the Tenant's denial.

When I consider all events that occurred on October 17, 2019 and October 21, 2019, I find that the Tenant has unreasonably disturbed the Landlord and other occupants of the residential complex. I therefore find that the Landlord has grounds to end this tenancy pursuant to section 47(d) of the *Act*, and I dismiss the Tenant's application to set aside the Notice to End Tenancy, dated October 28, 2019.

Although I accept the Tenant's submission that he was not involved in any inappropriate behaviour prior to October 17, 2019, I find that his behaviour on October 17, 2019 and October 21, 2019 constitute sufficient grounds to end this tenancy. I find that any reasonable person would understand that this type of behaviour is inappropriate in a residential complex and that providing a "stern warning" prior to ending the tenancy is not required.

I note that the decision that the Landlord has grounds to end this tenancy is based solely on incidents that occurred prior to October 28, 2019. None of the incidents that allegedly occurred after October 28, 2019 were discussed during the hearing and the have not been considered during this adjudication.

I note that the Tenant has submitted a petition that indicates they have never observed the Tenant display aggressive behaviour or in a state of inebriation. Although the people who signed this petition may not have witnessed this behaviour, it clearly does not establish that the Tenant is never angry or inebriated. In his own evidence the Tenant acknowledges being drunk and angry on occasion. I therefore find that this evidence has little evidentiary value.

I note that the Tenant has submitted letters in support of his tenancy, in which he is described as a good tenant. I find these letters to be of little evidentiary value, as they do not refute the evidence that he has caused significant disturbances.

I note that the Tenant submits the Occupant has also acted inappropriately during the Occupant's tenancy. As this hearing is not intended to determine whether the Occupant's tenancy should end, I have placed no weight on this submission. I specifically note that this tenancy is not ending on the basis of the Occupant being disturbed and, as such, the behavior of the Occupant is not particularly relevant. Even if I were to accept that the Occupant initiated the altercation in the elevator, the Tenant's response to the altercation was inappropriate.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I am dismissing the Tenant's application to cancel this One Month Notice to End Tenancy and the Notice complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on December 31, 2019. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and 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: December 20, 2019

Residential Tenancy Branch