



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

In this dispute, the tenants sought to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The tenants applied for dispute resolution on November 8, 2019, the Residential Tenancy Branch accepted their application on November 19, 2019, and a dispute resolution hearing was held on January 13, 2020. The tenant (J.L.), the landlord’s agent, and two witnesses for the landlord attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties, and I confirmed that evidence was served in accordance with the Act.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

I should note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord’s notice to end tenancy complies with the Act.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

It is an unfortunate fact of life that one mistake can have significant, lasting consequences. Sadly, this is one of those cases.

In this dispute, the landlord issued a One Month Notice to End Tenancy for Cause because one of the tenants (the one who did not attend the hearing) pulled a knife on the landlord's maintenance worker.

According to the landlord's summary, the testimony of the maintenance worker, and the testimony of a third-party witness, on October 30, 2019, the tenant (C.) was in the parking lot near the apartment building where he and his wife (the tenant who was at the hearing) lived. The maintenance worker (P.) drove into the parking lot and started unloading building supplies. C started yelling at P about some issues related to a pest control company not attending to the rental unit. (I will not go into details regarding the background on the subject matter of the argument. Suffice to say that there is no personal background or "history" between C and P. The incident came about as a result of the tenant's dissatisfaction with the landlord, which he referred to as "a fucking joke," according to P.)

The yelling – described as "screaming" by the witness – continued, and at some point, C approached P and got in his face. P tried to calm C down, with little success. P testified that C was threatening him. C said he was not threatening him. C then reached into his back pocket and pulled out a knife. At no point was the blade open, but there was "intent" to use it, argued the landlord. P testified that the witness, M., happened to be walking his dog by the parking lot when the incident occurred.

The police were called and eventually C was arrested. Crown Counsel is currently reviewing whether to lay charges, but there is no trial date. P was later arrested after the tenants called the police. (Crown has not proceeded with charges against P.) Both parties have an undertaking not to approach or be near each other.

Witness M testified that he saw C screaming at P and witnessed C pull a knife out, but with a closed blade. M thought to himself, "maybe it's time to leave," but he stuck around to see what would happen. He also remarked that C "would've done something if there weren't any witnesses."

The tenant expressed remorse and sadness over her husband's actions and is "not sure why" he pulled the knife. She clarified that she was not a witness to the incident, and she did not dispute that her husband had pulled a knife. She lives in the rental unit with her husband and two sons, ages 10 and 16, and has lived in the building for six years.

While the tenant explained that the description of the event as described by the witnesses and the landlord's agent is largely a case of "he-said she-said," and disputed that it was C who approached P first (and not the other way around), she agreed that "my husband made a really stupid mistake." She also went on to explain that they are "clean people" and that there have been no write ups from the landlord in the six years that they have lived there. That said, her husband has "a bit of a past" and will end up getting punished for this incident (referring to the court process).

I asked the tenant to speculate on why her husband may have pulled the knife, to which she briefly delved into an incident when he was 19 (he is now almost 50) years old. He was jumped when he exited his apartment from a rather less-than-safe building complex in downtown Victoria. (I am familiar with the building, being a resident of Victoria myself.) The culprits who jumped him used a knife or knives, and the husband ended up being in a coma for three months. As a result, the husband has suffered PTSD and that he carries a knife most of the time.

Though the tenant admitted that she and her husband are camping aficionados, and that they use knives as tools, they do not carry them to be used as weapons. The tenant ended the hearing by expressing regret and saying that she "wished this whole situation hadn't happened" but that this "was a one-off incident."

In closing submissions, the landlord's agent did not have much to add, but reiterated that while he understands the difficulty an eviction would place on the family, his primary concern is for the safety of his staff.

I note that copies of police witness statements, along with a copy of the Notice, were submitted into evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this case, the landlord issued the Notice because, as stated on page two of the Notice, the tenant (C.) has “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.” The Details portion of the Notice was completed, and the remainder of the Notice was filled out correctly.

The testimony of the maintenance worker, the testimony of the witness, their witness statements, the landlord agent’s submissions, and the non-disputed position of the tenant all lead to the unassailable conclusion that tenant C. pulled a knife on the maintenance worker. The maintenance worker is an occupant and a representative of the landlord. Having myself been a former Crown Prosecutor I am well-versed in the *Criminal Code* and find that allegations — substantiated by undisputed evidence — of pulling a knife, with or without the blade out, constitutes a serious jeopardy of the health and safety of another person. That the tenant may have carried the knife more as a camping tool is irrelevant: a reasonable person does not pull a knife on another person unless there is an intention of harm or threat.

Finally, while I empathize with the tenant’s traumatic experience of being jumped, this does not and cannot excuse the tenant’s decision to threaten the maintenance worker with a knife. I must, I should note, give little weight to the witness’ opinion that the tenant would have hurt the maintenance worker had there not been witnesses, especially because the tenant “looked like that sort person.” But, I cannot ignore the fact that the screaming or yelling escalated to the point of the tenant pulling a knife on another occupant. Yes, it was a “really stupid mistake,” and while it may have been a one-time incident, I cannot reach any other conclusion but that the tenant seriously jeopardized the health and safety of the maintenance worker.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued.

As the landlord has met their onus of proving the ground on which they issued the Notice, I dismiss the tenants’ application for an order cancelling the Notice without leave to reapply. The Notice, dated October 31, 2018, is upheld.

I must determine, next, whether the Notice itself is valid. Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. Having reviewed the Notice I find that the Notice complies with the requirements in section 52 of the Act.

Finally, section 55(1) of the Act states that if a tenant's application is dismissed and the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act. Having dismissed the tenants' application and having found that the Notice complies with the requirements of section 52 of the Act I thus grant the landlord an order of possession.

The landlord stated that, given the family circumstances, he is amenable to an order of possession taking effect at the end of February 2020. The tenants should be aware that this is, in my opinion, extremely kind of the landlord and that the landlord was well within its right to request an order of possession effective within two days. It would therefore be in the tenant's best interest to avoid all contact with the maintenance worker.

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants, and which is effective at **1:00 PM on February 29, 2020**. This order may be filed in, 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 subsection 9.1(1) of the Act.

Dated: January 13, 2020

Residential Tenancy Branch