



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSEING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MT

Introduction

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

- cancellation of the One Month Notice to End Tenancy pursuant to section 47 of the *Act* and,
- Request for more time to cancel a Notice.

The landlord's Tenant Relation Manager (YB) and the Director of Property Management (RM) attended for the landlord. The tenant (REL), together with his witness (AG) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions.

The tenant testified that he served the landlord with his application for dispute resolution by hand on December 30, 2019. The Tenant Relation Manager confirmed receipt of the tenant's application for dispute resolution.

The Director of Property Management testified that the One Month Notice to End Tenancy ("One Month Notice") was served via Canada Post registered mail on December 4, 2019 with an effective date of January 31, 2020. I find that both parties were served in accordance with section 89 and 90 of the *Act*.

Section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") 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 or if the application is to be cancelled.

Issues to be Decided

Is the tenant entitled to cancellation of the One Month Notice pursuant to section 47 of the *Act*?

Is the tenant entitled further time to cancel the Notice.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 01, 2017 and is currently a month to month tenancy. Monthly rent in the amount of \$350.00 is payable on the first day of each month. A security deposit of \$175.00 was paid by the tenant to the landlord and continues to be held in trust.

The Tenant Relations manager testified that discussions had taken place with the tenant regarding drinking, smoking and disturbing other tenants by his actions.

The landlord issued the One Month Notice on December 04, 2019. The One Month Notice had a stated move-out date of January 31, 2020. The grounds stated for ending the tenancy were the following:

- Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant Relation Manager testified that the tenant breached a material term of the tenancy agreement. The tenancy agreement stated that smoking was prohibited by WorkSafe BC within 25 metres of the rental property.

The Tenant Relation Manager testified that the landlord had written to the tenant on February 5, 2019, June 10, 2019 and June 24, 2019 advising the tenant to rectify the situation but failed to do so. She also added that there had been disturbances with the tenant and other residents in the neighbouring rental units.

The Tenant Relations Manager testified that she had included letters from women in the neighbouring units who were fearful of the tenant as the tenant continuously yelled and shouted and disturbed other residents.

The tenant admitted that he was in regular liaison with other tenants but denied yelling, shouting and disturbing other residents in the neighbourhood.

The tenant testified that he had been provoked by one of the neighbouring residents when he attempted to walk across from his rental unit to another neighbouring building. The tenant testified that the neighbour BD, who submitted the complaint letter in the landlord's evidence, had deliberately yelled and shouted at him to "hurry up" when she was driving her truck. The tenant admitted that during this incident he had sworn and shouted at her when she kept "honking the horn of the truck".

The tenant testified that he had spoken to the landlord after the written communication and that matters had been resolved and he had also apologised to his neighbour.

The tenant's witness AG testified that the tenant suffered from several disabilities including Parkinsons disease, deafness and uncontrollable shaking of the body. AG testified that the tenant used a walker all the time as he had difficulty walking.

Witness AG testified that two or three of the women were deliberately provoking the tenant as they wished the tenant to be removed from the landlord's premises. Witness AG advised that the tenant was loud in his actions due to his hearing disability and on occasions was unaware that he was speaking and shouting loudly.

Analysis

The tenant has applied to dispute a One Month Notice issued on December 4, 2019. Residential Tenancy Rule of Procedure 6.6 states;

"The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord must demonstrate why they feel the One Month Notice is valid.

Section 47(1) and section 47(1) of the *Act* state that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (h) the tenant
- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Branch Policy Guideline #8 states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Based on the evidence, the tenant had breached the terms of the tenancy agreement by smoking in and around the rental units. The tenant was informed of the breaches in writing and warned that if the behaviour continued, it could lead to eviction.

However, I find the tenant's and the testimony of his witness AG credible. I find that the tenant was provided an opportunity to amend his behaviour and did so accordingly. I find the tenant's testimony credible that he has apologised to the tenants and no longer smokes inside or within the vicinity of the building.

When a tenant disputes a notice, pursuant to the Rules of Procedure - Rule 6.6, the landlord has the onus of establishing proof, on the balance of probabilities, that the notice to end tenancy is valid. This means that the landlord must prove, that is more likely than not, that the facts stated on the notice to end tenancy are correct.

I find that the evidence and testimony given by both parties was a reliable and represented version of events, that were equally probable however the test that I have to apply is on the balance of probabilities which is to say, that it is more likely than not that based on the evidence and testimony that events occurred in a certain way as opposed to another.

I have reviewed the letters and notices from the landlord, and I have listened to the testimonies of the parties, I find that “yelling and shouting” are not sufficient reasons for ending a tenancy in accordance with section 47 of the *Act* and Residential Tenancy Policy guideline #8.

The landlord has not met the burden of proof in this matter, for these reasons, I find that the landlord has failed to provide sufficient evidence to prove on the balance of probabilities any of the grounds set forth in the notice to end tenancy.

The One Month Notice is cancelled and is of no force or effect and the tenancy shall continue until ended in accordance with the *Act*.

Conclusion

I grant the tenant’s application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

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: January 27, 2020

Residential Tenancy Branch