



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated October 31, 2019 ("One Month Notice").

The Tenant, the Landlords, F.Z. and A.Y. appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant, C.M. ("Witness"), was also present and provided affirmed testimony.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 1, 2018, ran until August 31, 2019, and was then on a month-to-month basis. They agreed that the Tenant pays the Landlord a monthly rent of \$600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$300.00, and no pet damage deposit. The Parties agreed that the Tenant rents a room in a house from the Landlord that the Tenant shares with other tenants.

The Landlord served the Tenant with a One Month Notice in person on October 31, 2019, with an effective vacancy date of December 1, 2019, and the grounds for the eviction being:

- the Tenant or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- the Tenant or a person permitted on the property by 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; and
 - jeopardized a lawful right or interest of another occupant or the landlord.

In the hearing, the Landlord said that five other tenants have moved out, because of the Tenant's behaviour, which the Landlord said includes smoking, which is not allowed in the rental unit. The Landlord pointed to the tenancy agreement addendum, which was signed by the Tenant, and which states:

5. Violation of any following provisions will result in a one month advance notice of ending tenancy.

...

- NO SMOKE IS ALLOWED UNDER ANY SHADED AREA (Inside deck, or under deck). Smoking is permitted only outside. Dispose of your butts on the land is unacceptable.

The Tenant denied having smoked in the rental unit. He said he smokes outside, including under the deck, but he said that the Landlord has seen him doing this and has not complained about it.

The Tenant's Witness said that he is the Tenant's neighbour, and that he sometimes smokes with the Tenant under the deck on the residential property. The Witness said that the Landlord did not discourage them from doing this.

The Landlord submitted the following text message from tenant, O.S., dated March 21, 2019 at 9:08 a.m. [all messages reproduced as written]:

Hope you are well today. I just wanted to bring to your attention the fact that [the Tenant] has embarked on a smear campaign because I confirmed what the tenants upstairs have been saying that he was smoking inside his room. Please advise him to leave me alone and leave me out of his discussions and don't mention my name anymore, tell him to pretend I don't even live in the house and I am doing so too, if this continues I may have to involve the police.

Thanks,
[O.]

The Landlord submitted more text messages from O.S., who the Landlord said told him that the Tenant blocked the driveway with branches, because O.S. confirmed that the Tenant smokes in the rental unit. The text is dated April 30, 2019 at 5:45 p.m. O.S.'s text includes pictures of branches all over the driveway. O.S. states:

What is the meaning of all this, did u give [the Tenant] authorization to do this rubbish, no u have to address this. I am ur tenant and u have to ensure I am able to have peace and comfort in a place I pay for. Thanks.

The Landlord responded saying that he did not ask [the Tenant] to do anything. O.S. responds with:

U need to address this, cos he can't continue making me uncomfortable, he did the same thing the other day and I am not sure u told him he has to stop this nonsense. You can see how he blocked the drive way.

The Landlord said he did not ask the Tenant to do anything, and O.S. responded:

But it's ur property and he can't continue inconveniencing ur tenants.

Think of the number of people that have left because of him... you can't just keep quiet.

You can't ignore the complaints you have received from me regarding [the Tenant] since the day I confirmed what the tenants upstairs said that he was smoking indoors, that's when his attack on me started.

He isn't happy I confirmed he smokes in his room and since then he has chosen to make [life] miserable for me, I agree I will move but for the time being I need peace and quiet and no further harassment from him, that's all I am asking for.

The Landlord submitted an email he sent to the downstairs tenants, including the Tenant, dated March 13, 2019 at 3:46 p.m.:

Hi Downstairs tenants,

I have brought to your attention repeatedly many times regarding smoking in house. This is unacceptable and I am disappointed about the recurrence.

I will implement smoke test kits like suggested in the email below. Based on the result, there will be Zero tolerance, i.e. when the result is positive you will be noted to move out.

Thanks,
[F.Z.]

The Tenant said that he never got along with O.S. He said it was someone else smoking inside the residential property, not him. He said: "There was no way that anyone saw me smoking there, because I didn't. I've gotten used to smoking outside. [The Landlord] was here a couple times when we were smoking under the deck." He also said that he is not doing anything illegal.

The Landlord said that other aspects of the Tenant's behaviour have caused other tenants to move out. He submitted statements from other former tenants who said they moved out because of the Tenant's behaviour.

The tenant, P.B., emailed the following statement to the Landlord on October 31, 2019

at 12:15 a.m.:

I would like to call you tomorrow. I cannot live here any longer. [The Tenant] is driving me crazy. I will be giving you my 1 month notice tomorrow when we speak at which time I will speak in detail. This is not a healthy place for me to live mentally, emotionally, and I will not put up with it any longer.

Respectfully,
[P.B.]

The same tenant emailed the Landlord at the same day at 6:16 p.m.:

I was unable to call you today, and I will call you from my work tomorrow. I am interested in staying longer and not leaving after November 1st. For this to happen I would want [the Tenant] to change how he behaves. This place should not be dominated by one person. Rather it should be a place where people rent a room and get along. If [the Tenant] is willing to work on not being angry all the time, I think this could be a fine place to live.

This tenant wrote the following email to the Landlord on November 1, 2019, at 4:34 p.m.:

Fabulous thank you [Landlord]. I do really like living here and I really like having you as my landlord.

I will continue with my lease as we agreed. I will steer clear of [the Tenant] until he moves out. As I understand he has 10 days to appeal the eviction. [The Tenant] has been drinking heavily since he was given the notice and he is making it very uncomfortable. He is ranting to himself. Like I said I am steering clear of him and I hope he is gone in 4 weeks time.

This tenant emailed the following message to the Landlord on November 6, 2019 at 7:28 p.m.:

I expect that [the Tenant] will legally be able to remain here for another 7 weeks, given the action he is taking with appealing his eviction (heads up). This is a stressful situation for me. I am seriously thinking about moving out when I can afford to so that I am not caught in the middle of the matters involving yourself and [the Tenant].

Three other tenants, R.G., K.M. and K.G. emailed the Landlord on October 30, 2019, at

5:52 p.m., as follows:

[P.B.] has come up and discussed some issues with me and we all agree with him whole-heartedly and we can discuss this further tomorrow. Unfortunately, we are also giving you one month notice that we will be vacating the property. We have been emotionally and mentally tormented by [the Tenant] for weeks and we have tried everything possible to stop these instances from continuing. We have been friendly, respectful, we have talked about our problems with him, we have argued with him, we have even let him scream at us, to which there will be no more.

As you are already aware, [the Tenant] is an alcoholic and proud of his accomplishments personally labelling himself a 'drunk' and gets belligerent multiple times a week. This is when he causes arguments, screams at us, calls us names and starts physical altercations with neighbours. [P.B.] has been in more arguments with [the Tenant] than I care to count and from what we hear, [P.B.] doesn't want much part in the altercation. [The Tenant] has also been proudly bragging about how he will take down [the Landlord] if it is the last thing he does, by reporting to a tenancy bureau that there are too many people living in the home. I'm tired of listening to his nonsense outside of our windows well after 12:00am often going on until around 2:00am. When we ask him to please lower the volume, he screams at us, calls us disrespectful and ends all viable communication by acting foolishly.

I have talked with you many times regarding this, and we know where you stand. With that said, we are moving out as of December 1, 2019 along with [J.] when he departs for his School semester. We are tired of abuse. We can't live here any longer and expect anything to change for the better. He ruins our enjoyment of the premises and causes mountains of anxiety and stress. This has become a toxic home and we cannot and will not live here any longer.

Best Regards,

[R.G.
K.M.
K.G.]

The Tenant said that R.G. "is not very truthful. I never caused any anxiety." He said the only problem was with the laundry schedule. He said: "They would do it whenever they

wanted. They often did it until 10 o'clock. They get three days and I get three days. That's what all the arguments were over was the laundry schedule."

The Tenant submitted a copy of a telephone message from another previous tenant, W.C., dated December 4, 2019 at 1:37 p.m., which states:

To whom it may concern,
I have been informed that [the Tenant] is facing eviction and that one of the claims against him is that he was the reason my roommates and I moved out of the suite above his floor in April 2019. We moved out for multiple reasons, but the main reason we moved out of the house was that there was a constant smell of smoke coming from the basement. [The Tenant] always claimed to smoke outside, and we never saw him smoke indoors, whereas we did see another previous tenant with a lit cigarette indoors. The smoke smell became unbearable for us to live in as we are nonsmokers, and we decided to leave. It would be disingenuous to claim that we left the house because of Scott.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Given the Landlord's extensive, internally consistent documentary evidence and testimony, I find on a balance of probabilities that the Landlord has provided sufficient evidence to support the validity of the One Month Notice. I find that the Tenant significantly interfered with or unreasonably disturbed a number of other occupants of the residential property by smoking inside, by being noisy and disruptive beyond

reasonable hours, and by harassing another tenant for reporting the Tenant's behaviour to the Landlord.

Pursuant to section 47 of the Act, I dismiss the Tenant's Application. I find that the Landlord warned the Tenant of the consequences of some of his behaviour in an email dated March 13, 2019. I find that the Landlord had grounds to evict the Tenant for his behaviour.

In addition, I find that the One Month Notice is consistent with section 52 of the Act as to form and content and I confirm the One Month Notice. I award the Landlord an Order of Possession. Given that the effective vacancy date of the One Month Notice has passed, the Order will be effective two days after service of this Order on the Tenant.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice. The Tenant significantly interfered with or unreasonably disturbed other occupants of the residential property to the degree that they wanted to move out, because of him.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 05, 2020

Residential Tenancy Branch