



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Non-Market Housing Operations, City of Vancouver and [tenant name suppressed to protect privacy]

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 28, 2019 ("One Month Notice").

Two agents for the Landlord, A.P. and L.R. ("Agents"), 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.

The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

During the hearing the Agents were given the opportunity to provide their evidence orally and to answer my questions. 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.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on December 24, 2019; however, the Tenant did not attend the teleconference hearing scheduled for March 2, 2020 at 9:30 a.m. (Pacific Time). The phone line remained open for 17 minutes and was monitored throughout this time. The only persons to call into the hearing were the Respondent's Agents, who indicated that they were ready to proceed. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Agents and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on March 2, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 17 minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I dismiss the Tenant's Application without leave to reapply.

Preliminary and Procedural Matters

The Tenant provided his email address in the Application and the Agents provided their email address in the hearing. The Agents confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

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

Background and Evidence

The Agents confirmed that the periodic tenancy began on August 23, 2019, with a monthly rent of \$375.00, due on the first day of each month. The Agents agreed that the Tenant paid the Landlord a security deposit of \$187.00, and no pet damage deposit.

The One Month Notice signed and dated October 28, 2019, with the rental unit address. The Agents said they served the One Month Notice by posting it on the rental unit door on Oct 28/19, with an effective vacancy date of November 30, 2019. The grounds for the eviction notice were:

- the Tenant or a person permitted on the property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of the cause on the One Month Notice state: "Tenant has changed locking mechanism on tenant's front door to unit, tenant is verbally abusive to tenants residing in the building, as well as staff. Tenant has not corrected behaviour breach within a reasonable timeframe."

In the hearing, the Agents said that on January 29, 2020, the Tenant was charged by the local police department with having assaulted another tenant outside and inside of the residential property. The Agents said that as a result of this charge, the Tenant is prohibited by the police from attending the residential property, unless he is accompanied by a police officer.

The Agents said that the Tenant changed the lock mechanism on the rental unit door without permission and that he refused to allow them to change it back to being consistent with the Landlord's master key. The Agents said that they have not yet changed the lock in order to avoid infringing any of the Tenant's rights.

The Agents said: "Since the Tenant has been absent from the building, the other tenants have calmed down. People wouldn't come out of their rooms when he was there, but they are using the common property again, and the stress level has decreased. We want to create a feeling of home for the people who live there and have it be a more peaceful place."

Analysis

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

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. 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.

The Tenant did not attend the hearing to present the merits of his Application; however, the Agents did attend to provide evidence as to the validity of the One Month Notice.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content.

Given the above, and pursuant to section 55 of the Act, I confirm the One Month Notice and find that the Landlord is entitled to an Order of Possession.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice. I dismiss the Tenant's Application without leave to reapply, as the Tenant did not attend the hearing. Further, I find that the One Month Notice is valid and effective as of November 30, 2019.

Given that the effective date has passed, I grant the Landlord an Order of Possession effective **TWO DAYS from the service of this Order on the Tenant.**

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: March 02, 2020

Residential Tenancy Branch