



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

JG ("tenant"), advocate, appeared for the tenant. JG stated that the tenant was in the hospital, and that she had authority to appear on behalf of the tenant. I confirmed with JG that she was ready to proceed with the hearing as scheduled. The landlord was represented by RB in this hearing, as well as LA and JG. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

During the hearing, the names of both parties were confirmed. As neither party was opposed, the landlord's name was amended to reflect the actual name of the landlord on the tenant's application.

The landlord's agents confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

JG confirmed that the tenant was served with the landlord's 1 Month Notice dated January 13, 2020, with an effective date of February 29, 2020. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

During the hearing, the landlord requested that the effective date of the Order of Possession be dated for March 31, 2020.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2016. The tenant's rent contribution is \$375.00 per month. The tenant paid a security deposit in the amount of \$467.50 at the beginning of the tenancy, which the landlord still holds.

The landlord served the tenant with a 1 Month Notice to End Tenancy on January 13, 2020 for the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord is seeking the end of this tenancy after an incident that took place on December 4, 2019, which involved a physical altercation between the tenant and another party. The landlord submitted a video of the incident, which contains no audio. The tenant does not dispute that he had struck the other party with the lint trap from the dryer, but states that this was a reaction to feeling attacked by the other party. The advocate for the tenant testified that this was the first and only incident since the tenant moved in in 2016.

The landlord testified that the other party is visually impaired, and despite the lack of audio in the video footage, it is clear that the tenant physically struck the other tenant. The landlord testified that this housing is allocated as affordable housing for seniors, and that there is a zero tolerance policy for physical violence as set out in the tenancy agreement. The landlord provided a copy of the tenancy agreement that states "Physical violence will not be tolerated. If tenants are violated towards other tenants, staff, contractors, or others, an emergency eviction may be issued immediately." The landlord testified that regardless of what had taken place prior to the tenant's actions, the tenant's reaction is not justified as it involved a physical assault of another party.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

I have reviewed the documentary evidence as well as the sworn testimony provided by both parties. I find it undisputed that the tenant had physically assaulted another party in the laundry room on December 4, 2019. Although the tenant provided an explanation for why the incident took place, I find that the assault infringed on the health, safety, and lawful right of the other tenant. Furthermore, the landlord provided a copy of the tenancy agreement which clearly states that physical violence will not be tolerated, and could result in an eviction.

I find that the landlord has provided evidence to support that this tenancy should end on the grounds provided on the 1 Month Notice. I find that that the landlord had provided sufficient evidence for me to conclude that the tenant had significantly interfered with and unreasonably disturbed another occupant to the extent that justifies the end of this tenancy. Although this was the first and only incident of this nature since 2016, I find that the seriousness of the tenant's behaviour justifies the end of this tenancy on the grounds provided on the 1 Month Notice, and accordingly I dismiss the tenant's application to cancel the 1 Month Notice dated January 13, 2020.

Section 55(1) of the *Act* reads as follows:

55 (1) 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

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b)

give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, February 29, 2020. I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession for March 31, 2020, which must be served on the tenant. If the tenant does not vacate the rental unit by March 31, 2020, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application without leave to reapply. I find that the landlord's 1 Month Notice dated January 13, 2020 to be valid, and complies with section 55 of the *Act*.

I grant an Order of Possession to the landlord effective March 31, 2020. Should the tenant(s) fail to comply with this Order, this Order may be filed 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 5, 2020

Residential Tenancy Branch