



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WENTWORTH PROPERTIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On January 27, 2020, the Tenant applied for a Dispute Resolution proceeding seeking 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 Tenant attended the hearing with I.M. attending as an advocate for him. B.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

I.M. advised that she served the Landlord with the Notice of Hearing package by registered mail on January 28, 2020 and B.C. confirmed that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

She also advised that she served the Tenant’s evidence to the Landlord by registered mail on March 10, 2020. B.C. confirmed that the Landlord received this evidence. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

B.C. advised that she served the Landlord’s evidence, including digital evidence, to the Tenant by hand on March 16, 2020. Included in this evidence was a note that if the Tenant was unable to view the evidence, he could go into the Landlord’s office to view it. Both the Tenant and I.M. confirmed that they received this evidence, that they had reviewed it, and that they were prepared to respond to it. As the Tenant was prepared to respond to the Landlord’s evidence, and as it was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision

I.M. made a preliminary argument that the hearing should be adjourned based on the Covid-19 pandemic and the recent announcement by the Provincial Government, under Section 10(1)(a) of the *Emergency Program Act*, that due to the current state of emergency, all evictions would be halted. She was advised that she was correct that on March 25, 2020, the Provincial Government issued a media release indicating that there would be a moratorium on evictions in British Columbia as a result of this pandemic. However, as of the time of this hearing, no changes have been made to the *Act* or the *Residential Tenancy Regulations* (the “*Regulations*”), so the hearing would proceed as scheduled. Furthermore, it is noted that as an Arbitrator with delegated authority under the *Act*, I am obligated to make this Decision according to the *Act* and *Regulations* as they read on the date of the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application 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 has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2018 and rent is currently established at \$923.00 per month, due on the first day of each month. A security deposit of \$450.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

B.C. advised that the Notice was served to the Tenant by posting it to his door on January 17, 2020 and the Tenant confirmed that he received this Notice. The reasons the Landlord served the Notice are because 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 “put the landlord’s property at significant risk.” The Notice indicated that the effective end date of the tenancy was February 29, 2020.

B.C. referenced the timeline of events that was submitted as documentary evidence and she stated that the Tenant was first observed on surveillance camera footage entering the communal washroom of the residential property on January 16, 2020 at 15:15:04 PM and then he exits at 15:15:28 PM, closing the door behind him. He is then observed entering the washroom again at 15:39:27 PM and exiting at 15:39:51 PM, closing the door behind him and checking the handle to see if it is locked. He can then be seen entering unit 406, which is right next to the washroom. He leaves unit 406, returns there at 16:13:10 PM, and then leaves unit 406 again at 16:16:26 PM. The tenant of unit 406 leaves her rental unit at 16:16:51 PM and at 16:35:05 PM, the tenant of unit 206 can be seen, on the telephone with the building manager, knocking on the washroom door but failing to be able to enter as the door is locked. At 16:52:51 PM, a former building manager is observed walking by the washroom, and for the next 27 minutes, he is observed to be knocking on the door repeatedly, talking on the phone with B.C., and attempting to gain access to the locked washroom. Finally, at 17:20 PM, another property manager appears on scene, unlocks the washroom door, and finds that the washroom is empty with the shower running on high, hot water.

She submitted that in reviewing the entirety of the surveillance footage, the Tenant is observed to be the only one in the bathroom, that he clearly locked the door behind him, and that no one else had entered the washroom after this point. She speculated that the Tenant deliberately turned on the shower, locked the door behind him, and this caused a flood that affected multiple units below it. She referenced a statement from the building manager, submitted as documentary evidence, which supports this account of the events in question. The building manager stated that once he finally entered the washroom, the “water thing was hanging and hot water running”, that the entire “washroom was wet”, that the Tenant was the last person in the washroom, and that the Tenant “has a history trying to harm this building and braking[sic] all kinds of rules like having pets.” He refuted the Tenant’s suggestion that he advised him to let the water run. B.C. submitted the invoice of the plumbing costs to support the damage caused.

I.M. and the Tenant advised that the Tenant had a history of complaints with what he felt were necessary repair issues in the rental building. With respect to this situation, the

Tenant advised that he complained that the washroom would have no hot water and he stated that he was instructed by the building manager to allow the water to run. He stated that all of the tenants in the building would leave the shower running, that the building is old, that the boiler is leaking, and that there is no hot water on a monthly basis. They cited a collection of complaint letters to the Landlord about required maintenance issues in the building. The Tenant acknowledged that he was the person observed in the video; however, he stated that he does not “recall” locking the door and does not “believe” he locked it. He submitted that the washroom in question was dilapidated and in need of repairs; however, the shower drain was not plugged. He stated that if he did anything, there was no malice on his part to harm the building.

Later on, he submitted that even if he did leave the shower on, he was directed to by the building manager, and that there was no evidence of malice. He reiterated that he did not see himself locking the door on the surveillance footage, that he “did not intentionally attempt to damage the building”, and that other tenants leave the water running for more than 20 minutes.

In addition, I.M. advised that while the surveillance footage is time stamped, as the footage is not continuous, there are gaps in time and there is no guarantee that another tenant in the building could not have entered the washroom. She submitted that many of the tenants in the building take long showers. She also added that the Tenant received the breach notice from the Landlord on the same day he received the Notice, so he was not given an opportunity to correct any issues.

B.C. reiterated that it is the Landlord’s position that the surveillance video shows the Tenant locking the door. She stated that the Tenant was a former building manager. Since he had been relieved of these duties, he has been disrespectful to the Landlord’s staff, he plays loud music, he has a cat contrary to his tenancy agreement, he continues to do unauthorized maintenance to the building, and he displays a general disregard to the Landlord’s warnings.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52

of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 55 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: 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, and/or

(iii) put the landlord's property at significant risk;

Regarding the validity of the reasons indicated on the Notice, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. When reviewing the video surveillance footage, I note that the Tenant acknowledged that he was the subject of the video surveillance. While he did not directly deny locking the door to the washroom, he stated that he could not recall, or does not believe that he did this.

In watching the videos, I find it important to note the following observations that I find to be curious and that raise some suspicions in my mind:

- At 15:15:29 PM, the Tenant leaves the washroom and closes the door casually behind him while walking away. On a second occasion though, he leaves the same washroom, but closes the door in a distinctly different manner. On this second occurrence, at 15:39:52 PM, he appears to face the door as he closes it and seems to check the door handle in a deliberate manner.
- At 16:13:11 PM, he walks past the same washroom, with the door still closed, and in a peculiar manner he appears to look at the door and move slightly towards it as he walks by and into the unit of 406.
- At 16:16:55 PM, the tenant of 406 exits her rental unit, walks past the washroom door, that is still closed, and glances twice at it on her way by.

While I do not find that the fourth video definitively demonstrates that the Tenant locked the door, it does appear that he closes the door in a different manner than the first time he exited the washroom, and he does so in a very deliberate manner, seemingly as if checking if the handle is locked. He later walks by that same closed door, appears to look directly at it for some reason, make a partial motion towards it, and then enter unit 406. Again, I do not find this to prove anything conclusively, but his behaviour does raise suspicion in my mind. Furthermore, the Tenant clearly went into 406 after closing the washroom door the second time, and the tenant of 406 can be clearly seen leaving her rental unit a short time later. While walking past the closed washroom door, she glances at it twice, which I find to be particularly suspicious when combined with the above observations. Once again, I do not find that this undeniably proves the Landlord's allegation, but it does cause one to question if her particular interest in the closed washroom door was due to the Tenant advising her of something.

In reviewing the remainder of the evidence and testimony provided, I find it particularly interesting that while the Tenant did not directly admit to turning on the shower, he alluded to doing so and stated multiple times that any actions that he may have done were not done with any malice. I also find it important to note that whenever he did want to shower, it was his belief that leaving the shower on was justified because he was directed to by the building manager. During the hearing, while there was no acknowledgement on the Tenant's part that he left the shower on and locked the door, I found it curious why he felt it necessary to emphasize repeatedly that there was no malice on his part.

Finally, I find it important to note that the consistent evidence is that the Tenant has had a history of dissatisfaction with maintenance of the building, that he believed the Landlord has neglected. Furthermore, while the focus of the Application was whether or not he was responsible for deliberately turning on the shower and locking the door, he would continuously circle back to listing his dissatisfaction with needed repairs to the building. It appeared as if he was providing his justification for taking actions into his own hands by doing something to force the Landlord to respond to his frustration of this perceived neglect. I also find that this observation is consistent with the undisputed testimony from B.C. of the Tenant's demeanour of being disrespectful and having a general disregard towards the Landlord.

When considering the totality of the evidence, I am satisfied on a balance of probabilities that the Tenant intentionally and deliberately turned on the shower and locked the door. While it may not have been done with any malice or as a goal to damage the Landlord's property, I find it was nevertheless a calculated action that was

more likely than not designed to make a statement or to seek retribution for the perceived disregard to his maintenance requests.

Ultimately, I am satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy under the reasons that 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 that the Tenant “seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” As a result, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*, effective **two days** after service on the Tenant.

Conclusion

I dismiss the Tenant’s Application in its entirety. The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant on the premises 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 29, 2020

Residential Tenancy Branch