



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47.

Both parties attended the hearing and had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Tenant BR was assisted by advocates EF and KD. The landlord was represented by BR (the landlord).

As both parties were present service was confirmed. The respondent confirmed receipt of the notice of hearing and evidence. The applicant confirmed receipt of the evidence of the respondent. Based on the testimonies I find that service of the notice of hearing was in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started in 2013. Rent is \$320.00 per month, due on the last day of the month. There are no arrears. At the outset of the tenancy a security deposit of \$500.00 was collected and the landlord still holds it in trust. The tenant continues to reside at the rental property. The rental unit is located in an independent living building for tenants with mental illness.

Both parties also agreed the Notice was delivered in person on January 31, 2020. The effective date of the Notice is February 29, 2020.

A copy of the Notice was provided. The reasons to end the tenancy are:

- 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.
 - Put the landlord's property at significant risk.

The details of cause were provided:

Our apartment building is subsidized by B.C.Housing. 10 apartments to live in the apartment the tenants all have a history of chronic mental illness. Because of this the tenants are quite vulnerable. Do not want their names even out.

The landlord affirmed the tenant is involved with drugs and invites drug users to his rental unit. The tenant is aggressive and two One Month Notice to End Tenancy for Cause were served in 2019 (the first one around May and the second one in September). The September Notice was disputed by the tenant and the parties settled, allowing the tenancy to continue. The decision of that application was submitted as evidence.

On October 26, 2019 the landlord mailed a letter to the tenant. The letter (which the tenant confirmed to have received it) was submitted as evidence and states:

You have received notice of eviction but after a discussion with [anonymized], your support worker with Mental Health, it was decided by the CSHS Board to reconsider this action on the understanding that if you are unable to follow all the apartment rules you would be required to leave your apartment. There would be no further mediation (arbitration?) regarding this eviction. You would be required to leave within 30 days. The Board expects that:

- (a) Your apartment and patio area will be maintained at a reasonable level of cleanliness. There will be a by-weekly inspection by [anonymized] to ensure that you are keeping the apartment as requested.
- (b) There will be no overnight guests at your apartment without consultation with a Board member.
- (c) Your vehicle in the parking lot will be removed by November 3, 2019.
- (d) There will be no further unacceptable communication with staff or other tenants.

A second letter dated October 26 was submitted as evidence by both parties. This letter states the tenant has been advised to correct his behaviour.

The landlord affirmed the tenant always receives a phone call 24 hours before the rental unit inspection happens. Four days before Christmas 2019 she opened the door of the tenant's apartment for an inspection. First she knocked on the door and nobody answered. She then opened the door and the tenant addressed her aggressively: "Get the heck out of my house. What the fuck are you doing?" The tenant agreed with this affirmation.

The landlord affirmed in the end of January an inspection was conducted, after a 24-hour telephone notice, and the staff found a marijuana bong and ashes in the rental unit.

The landlord has received numerous phone calls of other tenants affirming tenant MO is aggressive. The landlord reported the tenant texted a female employee and stated: "I will fuck her" and "She wanted to cut his dick off".

The landlord also affirmed the tenant is inviting homeless people and drug dealers to his apartment. The padlocks of the back gate of the building disappeared and were found in the tenant's rental unit.

The landlord also provided a letter dated February 21, 2020, signed by another tenant. The letter states:

I can only suppose that his medications are being supplemented with street drugs as this drastic change started when the drug house across the street started up. Homeless and street people where (SIC) being allowed to inhabit his apartment and his outdoor deck area at all hours. This has been very loud and disruptive at times not to mention a valid safety concern for the residents here. Recently, while I was doing the cleaning of the building, he confronted my co-worker in a hostile manner. He started to rant at us the words "fist of God" over and over. When he went to open his apartment door there was furniture up against it. He had to force

his way in and then kept watching us through the cracked door. We left the area as the behavior felt threatening. Last week as I went to do my laundry, he again cracked his door and kept watching me.

The tenant affirmed there are several wrong assumptions about him. The tenant does not use illegal drugs, and the tenancy agreement does not prohibit smoking marijuana in the rental unit. The medication for the tenant's mental illness is helping him. The tenant's friends visited him once in a while, but since the new padlocks were installed they have not been around anymore.

The tenant does not understand how the padlocks may have ended up in his rental unit. The tenant did not receive any 24-hour phone notice of inspection and never agreed to receiving these phone notices instead of a written notice. The tenant submitted a letter dated February 05, where he states:

To whomever is illegally entering my unit [anonymized] and stealing my belongings, I ask you to please stop and comply with section 30 of the Residential Tenancy Branch. If this illegal activity does not stop, I will apply at Service BC for the right to have the locks changed and legally have the right to own the only copy of the keys.

The tenant affirmed he was unpleasant with landlord BR. However, he did not send the text messages with aggressive language. The tenant entered into evidence a written submission dated February 13, 2020, in which he states to be unsure of why he received the Notice.

The tenant's advocate KD also affirmed the evidence produced by the landlord has no date and time, no witnesses were called, and insisted the landlord is breaching the Act by entering the tenant's unit without the proper 24-hour notice. The tenant is neat and shy and there is no reason for people to be scared of him.

Analysis

Section 47 of the Act allows a 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 property by the tenant has:

(i) Significantly interfered with or unreasonably disturbed another occupant or the landlord

(ii) Seriously jeopardized the health or safety or lawful right of another occupant or the

landlord.

(iii) Put the landlord's property at significant risk.

The landlord served the Notice on January 31, 2020, and the tenant filed this application on February 05, 2020. I find that in accordance with Section 47 (4) of the Act, the tenant's application was submitted before the ten-day deadline to dispute the Notice.

The tenant received the letter dated October 26, 2019, in which he was warned "There will be no further unacceptable communication with staff or other tenants". The tenant admitted he used foul language when the landlord entered his rental unit four days before Christmas.

The letter dated February 21, 2020, signed by another tenant, states the tenant is allowing homeless and street people at all hours. When asked about this, the tenant affirmed, somewhat evasively, that friends visited him once in a while.

I find the tenant was aware of details of the Notice and was able to address the reasons of the Notice during the hearing and with the evidence presented.

I find the actions of the tenant (using foul language with the landlord and inviting friends that may be drug users to his rental unit), after the tenant received two written warnings in October 2019, are unreasonable disturbances of other occupants and the landlord. I therefore find the landlord is entitled to end this tenancy, pursuant to sections 47 (1)(d)(i).

I find the form and content of the Notice complies with section 52 of the Act. I confirm the Notice and find the tenancy ended on February 29, 2020. I dismiss the tenant's application without leave to reapply.

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 and the tenant's application is dismissed, I must consider if the landlord is entitled to an Order of Possession.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an Order of Possession. As the rent for March 2020 has already been paid, the order of possession should be effective on March 31, 2020.

I warn the tenant that may be liable for any costs the landlord incur to enforce the order of possession.

For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement, thus the value of the security deposit accepted by the landlord was unlawful.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective on March 31, 2020. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The Order of Possession should be served immediately.

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 04, 2020

Residential Tenancy Branch