



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC OLC FF

Introduction

This Decision is further to an Interim Decision and Orders dated December 16, 2019. The proceeding is in respect to an application by the tenant made October 29, 2019 pursuant to the *Residential Tenancy Act* (the Act) wherein the tenant seeks cancellation of the landlord's One Month Notice to End Tenancy for Cause dated October 22, 2019 respecting an occurrence on September 13, 2019, and one on July 19, 2019. The tenant also seeks for the landlord to be ordered to comply with the Act, and for the tenant to be allowed recovery of their filing fee from the landlord.

During all proceedings the tenant, and the landlord with their legal counsel (the landlord) appeared in the conference call hearing. Service of hearing documents and all evidence was confirmed received by both parties. The landlord and tenant each acknowledged the receipt of evidence from the other. The parties again were provided opportunity to mutually resolve their dispute to no avail.

In making this Decision, I have considered all of the oral testimony and submissions made to me during the proceeding and considered all the documentary and photographic evidence submitted to me by the parties which are relevant to this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is there *sufficient* cause to support ending the tenancy?

Should the Notice to End in this matter be cancelled or upheld?

If upheld is the landlord entitled to an Order of Possession?

Background and Evidence

The relevant evidence in this matter is as follows. The rental unit is primarily occupied by the applicant tenant of this matter. The parties agreed having a disputatious history. The parties submitted a copy of the One month Notice to End for Cause dated October 22, 2019. The Notice was issued for the reason pursuant to **Section 47(1)(d)(i),(ii) and (iii)** as well as and **47(1)(e)(i) and (iii)** of the Act; effectively that on 2 separate occasions employees of the landlord were accosted or assaulted by 1) a guest of the tenant, on July 19, 2019; and 2) a guest of the tenant, and by the tenant, on September 13, 2019.

The tenant disputes all claims of the landlord and the validity of the Notice to End.

The relevant disputed evidence is as follows. The landlord claims that on July 19, 2019 one of their employees attended the residential property and during their visit an “Asian woman” and guest of the tenant threw a 12-inch by 12-inch piece of plywood at the employee’s car causing some damage to its window.

The said employee, and witness CL in this matter, provided sworn testimony similar to their affidavit dated November 01, 2019, that they did not know why the tenant’s guest had thrown the plywood. CL stated they had solely parked their vehicle beside a window and the tenant’s guest appeared to think he was staring at her through the window. The tenant’s response was limited, stating they did not witness the alleged incident, but that it was not their guest’s nature to act in the described manner and did not think her guest was physically capable of throwing the alleged piece of plywood. But none the less, her guest was visibly upset at the employee. The tenant stated they speculated that certain historical nationalist differences between the employee and her guest played a role in the alleged altercation. The landlord submitted a photo image of a mark on the employees’ car (window), approximately the size of, what appears, a pencil eraser, allegedly resulting from the flung object.

Witness CL further testified under affirmation that on September 13, 2019 they approached the rental unit, heard noises coming from the rental unit and called Police because they thought trespassers were in the rental unit, and awaited Police to arrive. They stated that while waiting Police they were, 1) approached by a female identifying themselves as the granddaughter of the tenant, 2) a man came from the rental unit and punched the witness in their ribcage and the two men grappled to the ground with the granddaughter also attacking the witness, and 3) the tenant then started swearing and

hitting the witness with a broom approximately 10 times over several minutes despite the witnesses' co-worker and a bystander's aid. The witness then let go of the claimed attacker on hearing an ambulance siren. Police arrived and took statements from all concerned, but no charges were laid. The witness testified the Police talked him out of charging the tenant because they are an "old woman". The tenant stated they saw the above witness "beating and hitting" her granddaughter's boyfriend and guest to the stomach and forcing him against the wall. The tenant testified they simply watched the incident as her guest was being held by the witness. The tenant testified they did not own a broom at the time and strongly denied they hit anyone with a broom.

The landlord presented a second witness, EE, another employee of the landlord as a driver and present during the above incident. Under affirmation they testified they witnessed the tenant striking witness CL with a broom while CL held the tenant's guest down until Police arrived. Again, EE stated Police took statements from all present. The tenant again denied they hit anyone with a broom; and, testified that lacking more details on the Notice to End, they did not come to learn until a week before the original hearing that the allegation of assault of the landlord's employee was that they, the tenant, had assaulted the landlord's employee with a broom.

With view to clarity and in response to the tenant's same question, the landlord was asked if they had sought a Police account or record concerning the above incident, given their investigation. The landlord responded they had considered it but determined to proceed via affidavit and oral testimony.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for the stated reason(s) and altogether establishing *sufficient* cause to end the tenancy.

In respect to this matter's incident of July 2019 I find that the described circumstances are vague and do not lay out a meaningful basis for the parties' conduct. None the less, I am satisfied the presented evidence indicates the tenant's guest likely flung an object which struck the landlord's employee's car. Again, due to lack of clarity of the evidence and in the absence of additional evidence I am not satisfied this incident on it own is of

such evidentiary weight to support ending the tenant's tenancy, especially in the absence of a direct involvement by the tenant.

In respect to the September 2019 incident of this matter, I accept the landlord's confidence in their information upon which they are relying to meet their burden, versus the timely and available accounting for the parties involved by the investigating Police. I find the parties agreed that a physical altercation erupted between the landlord's employee and a guest of the tenant. Upon review of the landlord's testimonial evidence I find their witnesses were forthright, however vague. While I may accept the tenant's guest might have started the described altercation outside the rental unit, the landlord's testimony left considerable gaps as to what occurred, not dissimilar to the vague circumstances respecting the July 2019 incident. I find that to the question of whether or not the tenant actively involved themselves in the altercation by hitting the landlord's employee with a broom, I am mindful the contrasting evidence of the two parties is solely bridged by the landlord's second witness, whom said they saw the tenant hit CL with a broom whilst CL held down the tenant's granddaughter's boyfriend. I am further mindful that EE did not elaborate as to the number of times they saw the tenant hitting CL with a broom. In the absence of additional evidence, and primarily in the absence of a Police report of the matter, the circumstances as presented surrounding the alleged assaults do not make sense. I further find I have not been presented with sufficient evidence in respect to CL's hesitancy to not charge the tenant with assault due to their "old age", which I view as another factor upon which a Police report might have shed light.

I find that the landlord was burdened to provide a likelihood that their version of events outweighed the likelihood of the tenant's version of events. In this type of matter, the burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities, and the claim must fail. I find this to be the case here. I find that on a balance of probabilities the landlord's assertions and evidence failed to establish support for their Notice to End Tenancy pursuant to Sections 47(1)(d) and (e) of the Act.

As a result of all the above I must **Order** the One Month Notice to End Tenancy for Cause dated October 22, 2019 as cancelled **or** set aside and of no effect. The tenancy continues in accordance with the Act.

It must be noted that the tenant has come perilously close to losing their tenancy and that it remains available to the landlord to serve the tenant with a new Notice to End Tenancy for *sufficient* cause.

As the tenant was effectively successful in their application, they are entitled to recover their filing fee of \$100.00 from the landlord. In full satisfaction of the foregoing,

I Order that the tenant may deduct \$100.00 from a future rent.

Conclusion

The tenant's application is granted.

The landlord's Notice to End dated October 22, 2019 is set aside and is of no effect. The tenancy continues until it ends in accordance with the Act.

This Decision is final and binding.

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 02, 2020

Residential Tenancy Branch