



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coast Mental Health
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The tenant was represented by their agent.

As both parties were present service was confirmed. The parties each testified that they had been duly served with the respective materials. Based on the testimonies I find the parties were each served in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the landlord corrected the name of the corporate entity named as respondent. The amended style of proceeding with the corrected parties is used for this decision.

Issue(s) to be Decided

Should the 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 and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in November 2018. The rental unit is a suite in a multi-unit building with approximately 30 other occupants. Monthly rent is \$375.00 payable on the first of each month.

On February 9, 2020 there was an incident where a guest of the tenant ran to another suite in the building, kicked in the door and damaged the furniture inside the room. The guest walked away after causing the damage and subsequently returned a minute later to set off and spray the room with a fire extinguisher despite there being no threat of fire. The landlord testified that the resident of the room was inside at the time and was frightened and alarmed by the actions of the tenant's guest. A video recording of the incident was submitted into evidence.

The landlord issued a letter to the tenant dated February 14, 2020 stating that the incident of February 9, 2020 was unacceptable and grounds for the tenancy to end. The landlord issued a 1 Month Notice dated February 25, 2020 citing the reasons for the tenancy to end as:

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.*

Tenant or a person permitted on the property has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord submits that the incident of February 9, 2020 was an egregious act by the tenant's guest which caused damage to the property when they broke down the door to the rental unit and destroyed the fixtures and property within the room. The landlord

said that the action has negatively affected the quiet enjoyment of other occupants and caused considerable mental distress to the other residents of the rental property.

The tenant submits that their guest acted in an unacceptable manner and that they have been reprimanded both personally and by the authorities who have issued criminal charges for the trespass and property destruction. The tenant says that this was an isolated incident and there is no evidence that this is part of a pattern of behaviour or that there is an ongoing risk to the landlord's property or the other occupants. The tenant also submits that as there is an ongoing housing crisis that an end of tenancy is a disproportionately severe remedy that would cause great hardship and risk to the tenant's health and safety.

Analysis

Section 47 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate 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;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The parties are in agreement that there was an incident on February 9, 2020 involving the tenant's guest kicking in the door to another occupant's suite and causing damage to the property. The video recording of the incident clearly shows an individual kicking in the door, destroying some of the fixtures within and leaving only to return with a fire extinguisher which they then proceed to unleash into the occupant's unit. I find that the act of kicking in a door and entering to cause destruction is an act that damages the landlord's property, inherently jeopardizes the health and safety of others and adversely affects the quiet enjoyment, security and safety of others.

The tenant submits that this was an isolated incident which has been effectively dealt with and not likely to occur. The tenant also disputes that this is part of a pattern of behaviour and submits that ending the tenancy on the basis of an isolated incident is a disproportionate response. I do not find the tenant's submissions to be persuasive.

Section 47 of the Act provides the reasons for which a landlord may issue a notice to end tenancy and there is no requirement under the Act or regulations that a landlord must demonstrate there is ongoing damage or risk to the property or interference and jeopardy to others. I find that the evidentiary burden on the landlord is simply to demonstrate that there has been an instance of the tenant or person permitted on the property by the tenant acting in a manner that has seriously jeopardized the health or safety or a lawful right of another occupant. I find that the landlord has met their burden of proof through their video evidence and testimony of the parties.

I accept the evidence of the parties that there was an incident on February 9, 2020 involving an individual permitted onto the property by the tenant. I accept the evidence of the parties that the individual acted in a manner that has caused damage to the residential property, significant interference with the other occupants and a serious jeopardy to the health and safety of the other residents of the property. I find that kicking in a door and entering to cause destruction to be an inherently harmful act that gives rise to a basis for an end of the tenancy.

While the tenant makes mention of the ongoing homelessness crisis in the province and state of emergency due to the global COVID19 pandemic, I do not find that these factors prevent a landlord from seeking an order of possession under the *Act*.

I find that a landlord has a duty to provide rental units that are free from unreasonable disturbances or interference. In doing so a landlord must weigh the interests of all of the approximately 30 residents of the rental property. I find that the landlord's ability to issue notices to end tenancy for cause are not curtailed by the absence of alternative

accommodations for the tenant. While the landlord has expressed their intention to work with the tenant to explore alternate housing I find this is not a requirement under the Act.

Ultimately, a landlord must balance their duty to provide housing to each of the residents in a property. I find that it would be unreasonable to the for a landlord to turn a blind eye to the incident of February 9, 2020 which caused damage to property and danger to the health of another occupant in their own rental suite.

I find that the landlord has sufficiently shown on a balance of probabilities that the tenant has engaged in actions that have jeopardized the health and safety of others. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenant's application.

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

The 1 Month Notice is dated February 25, 2020 and was issued prior to the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020.

Therefore, in accordance with section 3(2) of the Ministerial order and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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: April 23, 2020

Residential Tenancy Branch