



Dispute Resolution Services

Page: 1

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 AG was assisted by DG (the advocate) and CN. The landlord was represented by DL and JD (the landlord). Witness KB for the landlord also attended.

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 tenancy started in November 2017. Monthly rent is \$825.00 due on the first day of the month, but the tenant only pays \$320.00, as the balance is subsidized. There are no arrears. At the outset of the tenancy a security deposit of \$189.00 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 seniors.

A written tenancy agreement signed on June 07, 2018 by the tenant and the landlord was submitted into evidence. A previous tenancy agreement signed on October 18, 2017 was also submitted into evidence. Both agreements state:

22. Occupants and Guests.

(a) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

[...]

(c) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through arbitration under the *Residential Tenancy Act*.

(d) The landlord has selected the tenant partly on the basis of the number of residents in the tenant's household. The tenant agrees that only the persons names at the beginning of this tenancy agreement have the right to live as residents in the rental unit during the term of this tenancy, unless the landlord otherwise consents in writing. The tenant agrees to notify the landlord promptly of any change in the residents in the rental unit. The number of residents in a material term of this tenancy agreement, and the landlord may end the tenancy if:

- (i). the tenant fails to report a change in the number of residents in the rental unit;
- (ii). The number of residents in the rental unit is unreasonable;

A copy of the Notice was provided. The Notice is dated February 26, 2020 and the effective date is March 31, 2020. The reasons to end the tenancy are:

- Tenant has allowed an unreasonable number of occupants in the unit.
- 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:

Tenant lives in bachelor unit based on 1 resident occupancy. August 0219 0- Woman residing with tenant Nov 2019 – another woman residing with tenant Letter to tenant - Aug 28^h 2019 Incident reported by caretaker, Nov 12th, 2019 Letter Feb 26, 2020. See attached.

A signed Proof of Service Form was submitted into evidence (RTB form 34). The form is signed by the landlord's representative DL, witness KB and the tenant, confirming the tenant received the Notice in person on February 26, 2020 at 3:55 P.M. During the hearing, both DL and KB affirmed that the tenant received the Notice on February 26, 2020. The Notice was not in an envelope.

The tenant affirmed he signed RTB form 34. The tenant's advocate affirmed the tenant has brain injury and he did not understand what he was signing. The tenant's advocate affirmed the tenant received the Notice in an envelope and he only opened it on March 02, 2020, when the landlord asked him if he was challenging it. The landlord affirmed on March 02, 2020 she asked the tenant if he was challenging the Notice.

The landlord affirmed the tenant filed the application at least one day after the statutory deadline.

The landlord affirmed the tenant was living with a woman in his rental unit during the summer of 2019. This woman is a known prostitute who abuses of elderly people in the city where the tenant lives. The landlord affirmed the woman stole the rental unit keys, car keys, and money of the tenant. The tenant asked for help from the landlord to remove the woman from the rental unit and the landlord helped him to remove the woman and changed the rental unit's locks. The landlord affirmed all the residents of the tenancy building are seniors, some of them older than 100 years.

The landlord affirmed in November 2019 a second woman was living in the tenant's rental unit. The landlord found toiletries, clothing and personal belonging of both women in the 360 square feet studio rental unit.

The landlord's witness KB affirmed he is a caregiver that lived on site and he witnessed that both women lived in the tenant's rental unit. Both women had personal belongings in the tenant's rental unit.

The landlord submitted into evidence warning letters sent to the tenant on August 28 and on November 13, 2019 about the two women occupying the rental unit. The first letter states:

As a follow up to our meeting this morning in your unit please be advised that we have concerns about the guest(s) that have been visiting your unit. A brief overview of the conversation is that you have recently met a woman who has cleaned up your unit for a fee, you have now hired her to continue to do so and you feel quite good about the relationship and you are now lending her your vehicle. In addition, there have been complaints received in the administration office that the vehicle registered in you name is coming and going late into the night and coming back and possibly leaving again in the early hours of the morning.
[tenant], please take this as a written notice that you are responsible for any and all incidents that are related to your unit and each guest you invite onto the property is your responsibility.

The tenant did not dispute the first woman was in fact living in the rental unit and he asked for the landlord's help to remove her. However, the second woman was only in the rental unit to clean it, twice per week, during 3 to 4 hours each time. The second woman stopped cleaning the rental unit in February 2020.

The tenant affirmed he called the police to ask for help to remove the second woman from his rental unit and she was then arrested. Some days later, the tenant returned to this woman some of her belongings (purses and a couple of boots) that were in his rental unit.

The tenant's advocate affirmed he has brain injury, can easily be manipulated and uses medication.

At the end of the hearing the landlord was disconnected and did not call back. I ended the hearing four minutes later.

Analysis

I have reviewed all the evidence and find the tenant provided a coherent testimony during the hearing.

The tenant affirmed he received the Notice in person and signed the proof of service form on February 26, 2020. The landlord and her witness KB both confirmed this statement and affirmed the Notice was not delivered in an envelope. The tenant's advocate affirmed the Notice was delivered in an envelope and the tenant only opened the envelope on March 02, 2020. I find the tenant and landlord's testimony more credible over that of the tenant's advocate.

I find the tenant was served the Notice in person on February 26, 2020 in accordance with section 88 (a) of the Act.

A tenant may dispute a notice to end tenancy for cause pursuant to section 47(4) of the Act. The tenant was served the Notice on February 26, 2020 and filed this application on Sunday, March 08, 2020.

The Rules of Procedure state under definitions:

Days

- a) IF the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
 - b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- This definition applies whether or not an act can be carried out using an online service.

As the tenth day to dispute the Notice was Saturday, March 07, 2020, and the tenant filed this application on Sunday, March 08, 2020, I find the tenant disputed it within the time frame of section 47(4) of the Act.

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:
- (c) there are an unreasonable number of occupants in a rental unit;

The tenant agreed the first woman did in fact live in his 360 square feet studio rental unit during the summer of 2019.

The tenant affirmed the second woman did not live in his rental unit. However, the tenant affirmed the second woman had purses and a couple of boots in his rental unit. The tenant did not dispute the testimony of the landlord that the first woman is a known prostitute that abuses the elderly people of the city where the tenant lives. The tenant also affirmed the second woman was arrested when he called the police so that she could be removed from his apartment.

I find the tenant allowed the second woman to occupy his rental unit after he was warned by the landlord regarding the first woman.

I find the tenant repeatedly allowed an unreasonable number of occupants in the rental unit and continued to do so after receiving a written warning in August 2019. I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(c) of the Act.

As the Notice is confirmed, I make no findings regarding the other reasons cited by the landlord to end the tenancy.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form. I confirm the Notice and find the tenancy ended on March 31, 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 effective two days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the Order of Possession.

Conclusion

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

I grant an Order of Possession to the landlord effective **two days after service of this Order**. 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.

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 22, 2020

Residential Tenancy Branch