



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 request pursuant to the Residential Tenancy Act (the Act) for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), issued pursuant to section 47 of the Act.

The landlord, represented by LW, and the tenant attended. Landlord's witness NW also attended. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

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 is compliant with the *Act*.

Preliminary Issue – Correction of address

At the outset of the hearing the tenant corrected the tenancy address and the tenant's residential address to include the word basement.

Section 64(3)(c) of the *Act* allows me to amend the application, which I have done to correct the tenancy address and the tenant's residential address.

Preliminary Issue – Service of Evidence

The landlord affirmed she received the Notice of Hearing from the tenant in person on March 15, 2020. I find the tenant served the landlord the Notice of Hearing in accordance with section 89(1)(a) of the Act.

The tenant affirmed he did not serve his evidence to the landlord. The tenant sent the landlord an e-mail, however, he did not attach the evidence to the e-mail.

The landlord affirmed she did not serve her evidence to the tenant.

As both parties failed to serve their evidence, it is excluded from my consideration.

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 based on the Notice?

Background and Evidence

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

Both parties agreed the tenancy started on September 01, 2019. Rent is \$630.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$300.00 was collected and the landlord still holds it in trust. The rental unit is a basement with bathroom and kitchen independent from the main house and the tenant continues to reside at the rental unit. The landlord lives in the rental unit above the tenant and sees the tenant frequently.

A copy of the Notice was provided and both parties affirmed they have a copy of it. 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.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant

The Notice is dated March 09, 2020 and was posted to the tenant's door on that day. The tenant affirmed he got the Notice on March 09, 2020. The effective date of the Notice is April 02, 2020.

The details of the cause are:

On Wednesday March 4 at approximately 7:00 pm, the tenant [anonymized] contacted authorities to report an alleged assault initiated by us, the occupants, rather than attempting to resolve the conflict on our own. As this was occurring, he was being verbally aggressive towards us and falsely accused us of attacking him, which made us feel unsafe in our own home. In addition to this, there have been several incidents in which he was being threatening and generally disruptive to other occupants as well as ourselves. For instance, he has sent several threatening text messages to us [anonymized] as well as former occupant [anonymized] who has since terminated their lease at our residence as a result of this.

The tenant affirmed the internet service provided by the landlord is not working properly and the toilet does not flush. The tenant affirmed he has been communicating with the landlord about these issues since he moved in, but the landlord has not provided a solution.

The tenant affirmed he sent text messages include the following statements: "fucking dummy, fucking idiot, you need your brain examined, don't be a smartass, you're 19 and know shit all, I'll talk to you however the fuck I want to little girl". At a later point the tenant affirmed he did not send text messages with all these terms, and later he affirmed again that he did send texts to the landlord with these terms.

The landlord affirmed receiving from the tenant multiple text messages with offensive terms since February 2020 and they are affecting her health, her well-being and her ability to concentrate on school. The landlord asked the tenant to stop sending her abusive text messages, but he continued to do so.

The tenant affirmed the landlord is entering his rental unit without notice and on March 04, 2020 there was an altercation with the landlord and the police were called.

Analysis

Based on the undisputed testimony, I find the tenant received the Notice on March 09, 2020. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47 (4) of the Act.

Section 47 of the Act states:

(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,

Based on the tenant's undisputed testimony, the tenant has repeatedly sent abusive text messages to the landlord after the landlord asked him to stop. I find this has unreasonably disturbed the landlord. I therefore find the landlord is entitled to end this tenancy, pursuant to section 47 (d)(i) of the Act.

The tenant had the option to apply for dispute resolution in order to solve the issues he is having with plumbing, internet service and unannounced inspections of his rental unit.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the grounds for ending the tenancy and is in the approved form.

The effective date of the Notice is April 02, 2020. The Notice was received by the tenant on March 09, 2020. Section 53(2) of the Act states that when the effective date is earlier than the earliest permitted date, the effective date is deemed to be the earliest date that complies with the Act. As the Notice was issued according to section 47 of the Act, I correct the effective date to April 09, 2020, one month after it was received by the tenant.

I find that pursuant to section 55(1)(a) of the Act, the landlord is entitled to an order of possession effective April 09, 2020, the corrected effective date of the Notice.

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

Conclusion

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

I grant an Order of Possession to the landlord effective on April 09, 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.

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: May 11, 2020

Residential Tenancy Branch