Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On July 8, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*").

M.E. attended the hearing and advised that the named Tenant's soul was "murdered", and that M.E. was attending the hearing on behalf of the former Tenant. M.E. had A.P. attend as counsel for the Tenant. As well, M.E. had H.S., R.E., and T.C. attend the hearing as support workers or advocates for the Tenant. M.E. also had a number of other parties call into the hearing as witnesses; however, as the number of participants who had called in were already unmanageable, these other parties were advised to exit the conference call, and M.E. was notified that these people could be contacted to attend the hearing at a later point, if necessary. As A.P. attended the hearing as counsel for the Tenant, her name was removed from the style of cause on the first page of this Decision.

M.B., J.M, and S.J. attended the hearing as agents for the Landlord. All in attendance, except for A.P. provided a solemn affirmation.

A.P. advised that the Landlord was served with the Notice of Hearing package and some evidence by registered mail and email on July 10, 2020. As well, additional evidence was served to the Landlord by fax and email on July 23 and 24, 2020. M.B. confirmed that the Landlord received the Notice of Hearing package and took no issue with the Tenant's evidence. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing package and the Tenant's evidence. As such, this evidence will be accepted and considered when rendering this Decision.

M.B. advised that the Landlord's evidence was served to the Tenant by registered mail on July 14, 2020 and A.P. confirmed that this evidence was received. As service of this evidence complies with Rule 3.15 of the Rules of Procedure, I am satisfied that the Landlord's evidence has been satisfactorily served on the Tenant. This evidence will be accepted and considered when rendering this Decision.

At the beginning of the hearing, A.P. advised that she made a request to the Residential Tenancy Branch for this hearing to be scheduled as an in-person hearing. She stated that this request was made on the Application and that an accompanying letter from the Tenant's doctor was provided, suggesting that an in-person hearing be scheduled so that the Tenant's "support network can accompany her."

When questioned, A.P. insisted that she made this request properly; however, pursuant to Rule 6.4 of the Rules of Procedure, clearly the required Request for Alternate Hearing Format was not completed and provided to the Residential Tenancy Branch within three days of the Notice of Hearing package being made available. Had A.P. truly believed that she made this request correctly, and as the Notice of Hearing package was ready over a month ago, it is not clear to me why she did not inquire at any point with the Residential Tenancy Branch about why this hearing was scheduled by teleconference.

Furthermore, I find it important to note that five other people were permitted to attend the hearing on behalf of the Tenant, for support. There were no submissions made with respect to how the Tenant was prejudiced by having to attend by teleconference, how the Tenant could not have participated by teleconference, or why the Tenant could only proceed by way of an in-person hearing. As this request was not made pursuant to the Rules of Procedure, and as the Tenant had an exceptionally large group of attendees for support, this request for an alternate form of hearing was denied.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2008, that the subsidized rent is currently established at $336.00 per month, and that it is due on the first day of each month. A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

M.B. advised that the Notice was served to the Tenant by being posted on the door of the rental unit on June 25, 2020. M.E. could not speak to whether the Notice was received or when but stated that A.P. would know these details. As this Notice was disputed on July 8, 2020, I am satisfied that the Notice was more likely than not served by being posted on the door on June 25, 2020 and that it was deemed to have been received three days later.

The reasons the Landlord served the Notice are because 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”, “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 another occupant or the landlord”, and because of a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The effective end date of the tenancy was noted as August 31, 2020 on the Notice.

M.B. advised that the Tenant refuses to wear any article of clothing and routinely wanders around the common areas of the apartment building in this state of undress. She stated that in one incident, the Tenant harassed a Canada Post employee to the point that a formal complaint was made and mail delivery to the building was threatened to be cut off as the safety of the Canada Post employees may have been endangered.

A warning letter was sent to the Tenant and this behaviour stopped. However, there were further incidents where contractors refused to work in the building as the Tenant would walk around unclothed and harass them. The Landlord has made attempts to try to support the Tenant; however, the Tenant continues to walk around the building nude. M.B. referred to the documentary evidence submitted that included complaint letters from other residents of the building, multiple warning letters addressed to the Tenant about the alleged conduct, and pictures demonstrating that the Tenant would be completely unclothed in common areas of the building.

A.P. advised that the Landlord has submitted complaint letters; however, the names on most of these have been redacted and there is no way to know who these people are. As such, the Tenant cannot speak to these incidents and the reliability of these letters should be given less weight. The one letter that is signed is problematic as the resident refers to the Tenant as “it” and it is the belief of this resident that the Tenant being naked is “annoying” and “not amusing.” She stated that the burden is on the Landlord to prove that any allegations are a significant interference, an unreasonable disturbance, or a serious jeopardization of the health or safety or lawful right of another occupant or the Landlord.

She submitted that the Tenant has their own “unique views on how to live”, and while the way in which the Tenant chooses to exist is not conventional, it is also not a harm to other people. She referenced a medical letter submitted confirming that that Tenant suffers from highly vulnerable conditions and she is fearful of what might happen to the Tenant if evicted.

Regarding the incident with Canada Post, she stated that it is her understanding that this incident occurred due to a misunderstanding between the Tenant and the Canada Post employee. She advised that the Tenant contacted a Canada Post manager and resolved this issue. Furthermore, this incident took place over a year ago, in March 2019. She stated that the Tenant is prone to being misunderstood.

M.E. was then provided an opportunity to make submissions; however, these were complex, extraordinary, and difficult to follow or understand completely. The following is my best attempt at summarizing and encapsulating these submissions. M.E. advised that a significant part of the troubles stem from the language that the Landlord speaks as it is “trans-gender hate speech”, and this is different from what M.E. speaks. M.E. stated that on one occasion in 2018, the Tenant was advised by J.M. “to cover up her nipples and to turn around”, and that this language used is one of “hate and misogyny.”

Regarding the alleged interactions with workers in and around the building, and with other residents of the building, M.E. stated that 90% of the conflicts have been resolved, that the “hatred” towards the Tenant is declining, and that there has been only one death threat. M.E. advised that the Tenant avoids confrontation and has never started an altercation; however, any alleged incident has been initiated by other people. M.E. then stated that the Tenant matches the tone that is being directed at the Tenant and then reciprocates that same tone back. M.E. submitted that the incident with the contractors originated from them yelling at the Tenant; however, M.E. contradictorily then stated that these workers were ok with the Tenant’s unclothed body.

With respect to the incidents where the Tenant was observed to be frequently walking around the common areas of the building unclothed, M.E. made statements about the “mammal brain” of the Tenant “dying” as a result of some affect on the Tenant’s “mitochondrial DNA.” M.E. advised that the Tenant would never be “naked” as this term is a construct created in the bible. Then M.E. made reference to the Pope in the 18th century and spoke briefly of the ability to time travel. M.E. then attempted to explain the difference between being “naked” and unclothed, and that the act of wearing clothing is a “lie to the body’s mitochondrial DNA.”

In an effort to understand M.E.’s differing position on the concepts of nakedness, nudity, or being unclothed and if the Tenant had in fact been observed walking around the common areas of the building without clothing on, M.E. was asked to refer to the pictures submitted by the Landlord as documentary evidence and if this person captured in the footage was the Tenant. M.E. confirmed that the person in the pictures was indeed the Tenant, but that this was simply the “body” of the Tenant and the Tenant was subsequently “murdered.” The Tenant’s body has been reincarnated and it is the Tenant’s “chi child” that is now walking around the residential property without clothing. M.E. advised that this “chi child” is being ordered by the Landlord, under a “patriarchal” perspective, to put on clothing. M.E. reiterated that the Tenant did not walk around the building in this state of undress, but it was the Tenant’s “chi child” that did. As well, this “chi child” would never wear clothing and continues to walk around the common areas of the property in this manner.

A.P. advised that the Landlord noted in a warning letter that nudity in public places could be considered a charge under the *Criminal Code of Canada*. However, she stated that as the Attorney General has not laid any charges against the Tenant, this is unfounded. As the Tenant identifies as a “trans individual” with different beliefs, the context of this particular situation must be considered under a different lens.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: 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 residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

When considering the different reasons that the Notice was served and when reviewing the totality of the evidence before me, I find that the main reason I will consider is whether the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property.

The consistent and undisputed evidence before me is that the Tenant, the “chi child” of the Tenant, or M.E. has remained unclothed, in the past, while in common areas of the residential building, and continues to do so. Despite M.E.’s differing viewpoint on whether this state of undress would be considered “naked” or “nude” or “unclothed”, and despite M.E.’s belief that being in this state is acceptable as a “celebration” of the body, in my view, and based on common sense and ordinary human experience, I do not find this to be a commonly held belief that is acceptable to be conducted in public areas. I find it more likely than not that the majority of the public would be of the belief that being completely unclothed in a public space to be unacceptable, and this viewpoint is supported by laws that have been enacted to restrict such behaviour.

Furthermore, while I acknowledge that most of the letters submitted by the Landlord from other residents of the building are not signed and should be given less weight, when considering the content of these letters in conjunction with the undisputed evidence that the Tenant, or another identity of the Tenant, continuously walks around the common areas of the building with little or no clothing, I find it more likely than not that these complaints carry some weight and that at least some of the residents of the building are not comfortable with this behaviour. Moreover, based on a balance of probabilities, I also find it more likely than not that the incident with the Canada Post employee and the incident with the contractors were more closely aligned with the Landlord’s account rather than the Tenant’s portrayal. As such, I find that I prefer the Landlord’s evidence on the whole.

Ultimately, I find that there is sufficient evidence to justify service of the Notice under the reason that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. As such, I dismiss the Tenant's Application and pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession.

As J.M. advised that the Landlord wanted to work with the Tenant to facilitate an easier transition, she requested that the Order of Possession be effective for a later date. As such, I grant an Order of Possession that takes effect at **1:00 PM on September 30, 2020** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenant's Application is dismissed without leave to reapply and the Landlord is provided with a formal copy of an Order of Possession effective at **1:00 PM on September 30, 2020** after service on the Tenant. 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: August 15, 2020

Residential Tenancy Branch