



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON LIONS ACTIVITIES
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by two agents and had three witnesses

. The tenant was represented by an advocate, the tenant also gave testimony. The landlord submitted documentation to the Branch but not the tenant. It was explained to the landlord that the documentary evidence could not be considered as it was never provided to the tenant. The tenant provided some documentation to the Branch and the landlord which was considered in its entirety.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

The landlord's agents and their witnesses provided the following testimony. DR testified that the tenancy began on July 1, 2016 and that the tenants current monthly rent is

\$366.00. LB testified that a One Month Notice to End Tenancy for Cause was issued on July 7, 2020 for the following reasons:

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;*

LB testified that she has received numerous complaints about the tenant and his behaviour. LB testified that she herself was verbally abused by the tenant by comments such as “you’re a waste of skin” and “you’re a sorry excuse of a human being due to your race”. LB testified that the tenant also threatened to shoot her to which she has filed a police report and an investigation is pending.

MN testified that the tenant has called her numerous names and uses profanity on a regular basis towards her. MN testified that many of the words used by the tenant are words that she cannot repeat for this hearing. MN testified that the tenant told her “I’ll get my guns back and I’ll kill you all”. MN testified the she is scared of the tenant and has noticed that his behaviour has gotten worse in the past few months.

RD testified that the tenant tried “splitting my skull open with an axe handle” a few weeks ago. RD testified that on another occasion, the tenant made a comment to his friend that “it’s all been arranged, he’s going to get a lot worse”. RD testified that the tenant has threatened him more than once and that he should be evicted.

VP testified that she is afraid of the tenant and his dog. VP testified that the tenant used the dog in a threatening and intimidating manner. VP testified that she carries dog deterrent spray in case he has the dog attack her. VP testified that she has moved units to the opposite end of the complex to avoid the tenant and because she fears him.

LB and DR testified that they have received numerous complaints about the tenant and that they spoke to him many times to correct his behaviour only to be berated and threatened by him, they request an order of possession.

The tenant gave the following testimony. The tenant testified that everyone is lying and that they are colluding against him. The tenant testified that he doesn’t know why they are doing this. The tenant testified that he is being discriminated against for being a

retired veteran. The tenant testified that he did not threaten anyone and that he was the one that would call the police to attend to all the threats.

PY submits that the tenant suffers from severe post traumatic stress disorder and that the landlords did not provide sufficient written warnings to the tenant about his behaviour. PY testified that the landlord did not provide proof of any criminal charges for the uttering threats and that the notice should be cancelled, and the tenancy should continue.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my finding is set out below.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlords agents and the witnesses to be a more credible witnesses than the tenant. The landlord's agents provided consistent, logical testimony. The landlords admitted when they could not recall specific facts. The testimony of LB was especially compelling and credible. The witnesses were also very clear in their testimony and when they were unsure of issue, they advised that they could not remember.

The tenant was argumentative, focused on irrelevant matters and conducted himself in an agitated and irrational manner. I found that much of the tenant's "statement" which was 15 minutes long and uninterrupted, to have little to do with the matter at hand and was concerned with attacking the landlord's agents, the witnesses and most specifically RD, and making himself appear to be the wronged party. When given the opportunity to cross-examine the landlord the tenant chose to ask irrelevant personal questions rather than any substantive matter. Towards the conclusion of the hearing the tenant continually interrupted the landlord's testimony, shouting disagreement with her evidence.

Based on the foregoing, where the evidence of the parties clashed, I found that the landlord's and witnesses' version to be more credible and consistent with how a reasonable person would behave.

When a landlord issues a notice under Section 47 of the Act, they bear the responsibility in providing sufficient evidence to support the issuance of that notice. As noted above, the five people in attendance for the landlord each gave clear, concise, and credible testimony. Each of the witnesses provided testimony as to how difficult it has been to live with the subject tenant in the complex and how much he has negatively impacted their once peaceful community. Based on all of the above, and on a balance of probabilities, I find that the landlord has provided sufficient evidence 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, **and** seriously jeopardized the health or safety or lawful right of another occupant or the landlord; accordingly, I hereby grant the landlord an order of possession pursuant to section 55 of the Act. The tenancy is terminated.

Conclusion

The landlord is granted an order of possession, the tenancy is terminated.

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 20, 2020

Residential Tenancy Branch