



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TERRA PROPERTY MANAGEMENT LTD. (AGENT) AND
HELLENIC HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing was held based on the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 1 Month Notice to End Tenancy for Cause dated July 23, 2020 (1 Month Notice).

The tenant, two advocates for the tenant LH and NA, with NA observing only (advocate), counsel for the landlord CC (counsel), the president of the housing society for the landlord DD (landlord), and an observing junior counsel HH (junior counsel) attended the teleconference hearing. The hearing process was explained to the parties, evidence was reviewed, and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the parties confirmed receipt of all documentary and digital evidence and that they had the ability to review all evidence, I find the parties were served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Firstly, I have amended the tenant's application to include the name of the landlord HHS of BC. I have left the management company as agent for the landlord. This amendment was made pursuant to section 64(3)(c) of the Act.

Secondly, the parties confirmed their email addresses during the hearing. The decision will be emailed to the parties and any responsive orders will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. The tenancy began on October 15, 2003.

The tenant filed their application to dispute the 1 Month Notice on August 1, 2020, which was within the 10-day timeline to dispute a 1 Month Notice under the Act. The effective vacancy date listed on the 1 Month Notice was August 31, 2020, which has passed. The landlord confirmed that money for use and occupancy was paid by the tenant for September 2020. The tenant continues to occupy the rental unit and expressed their desire to continue to reside in the rental unit.

The 1 Month Notice listed 4 causes, specifically:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. 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.
4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord presented several videos, with audio, for my consideration. In the first video, two staff members distribute care packages, which the landlord writes contained 14 items in each bag worth approximately \$400.00 per bag. The staff members place packages at each door shown on the video, and the tenant opens their door to remove their care own package. Within 2 minutes, the tenant enters the hallways and is looking towards the stairwell door and appears to be nervous as the tenant continuously looks

back at the stairwell door as the tenant removes four other care packages, which do not belong to the tenant. Although the tenant admits to taking all four care packages, the tenant's version of events is that they were keeping them in their unit for safe keeping and that they called her neighbours first to advise of what she planned to do. The tenant is in her 70's and the rental unit is in a building for seniors.

The landlord presented an Affidavit from a neighbouring tenant, AK (AK). AK writes that they were home the entire time and did not receive a care package on May 29, 2020 and that the tenant did not knock on their door or call them. AK writes that the next day, May 30, 2020, the tenant knocked on their door to return the care package and when the package was opened in the presence of DD (DD), was missing items and did not contain the same contents as the care package their friend received. Although the tenant claims that they called AK and left a message on their answering machine, the Affidavit from AK does not support that the tenant called AK or left a message and indicates that AK was home the entire time between May 29, 2020 and May 30, 2020.

Counsel submitted an Affidavit from the care package supplier, AGT (AGT), which reads that AGT purchased and donated 30 care packages that were curated identically, with the same number of products in each, notably containing a \$40.00 bottle of olive (oil) in each bag. The landlord testified that none of the care packages contained more than one of each item, yet the bags returned by the tenant were all missing the \$40.00 bottle of olive oil and instead of 14 items, had only 10 items, some of which were duplicate items.

The tenant denies that she stole any bottles of olive oil from any of the care packages and cited prior thefts in the building as the reason taking the other care packages by claiming it was to keep them safe. Counsel submits that one of the care packages has not been returned and the other three all contained only 10 items and none of them had the \$40.00 bottle of olive oil in them. DD writes that they witnessed the contents of the care packages that were returned. Photo evidence was reviewed showing all the contents returned to AK and there is no olive oil bottle in the photos.

During the hearing, the advocate stated that the landlord mentioning the tenant's actions as suspicious was how the tenant always acts. The tenant did not knock on any of the four other apartments before taking their care packages in the video evidence, and each time, the tenant appeared nervous and continuously looked back at the stairwell before and after taking the care packages. A video of the tenant and AK having a conversation on May 30, 2020 was reviewed (May 30 conversation video), and the tenant's demeanour was much different than in the May 29, 2020, when the tenant is shown taking the care packages. The May 30 conversation video shows the tenant having a

conversation without looking nervous and the tenant was not constantly looking back at the stairwell door either.

At this point of the hearing, the parties were advised that I had seen enough video evidence and testimony from the parties, that I found the 1 Month Notice was valid. After 52 minutes, the advocate claimed they had additional evidence to present, and the parties were advised that I did not need to consider any other evidence related to the matter as I was satisfied that the 1 Month Notice was valid for the reasons I will set out below.

Analysis

Based on the documentary and digital evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find the video evidence to be very compelling and of significant weight. I find the actions of the tenant were not consistent throughout the videos I reviewed and that the tenant appeared nervous in the videos when the tenant is shown removing 4 care packages that did not belong to her. I also note that the tenant removed personal items intended for others without knocking on their door and during a pandemic, where social distancing is crucial.

I also find the tenant's version of events to be inconsistent with the video evidence, which I find supports that the tenant was both nervous and suspicious, and the Affidavit from AK supports that the tenant did not call AK, and that AK was home the entire time for the material times related to the care package removal by the tenant. In addition, I find that it would have been reasonable for the tenant to knock on each door before taking anything or touching anything that did not belong to them; however, the tenant did not do that. In fact, the tenant only knocked on the doors when returning the care packages, which I note were all missing items and for which, one has not been recovered. Based on the balance of probabilities, I find that it is more likely than not that the tenant kept the olive oil and other items before returning the remainder of the care packages. In other words, I find the tenant was not credible during the hearing as I find their explanation of events are inconsistent with the video surveillance evidence and the Affidavits submitted.

I reject the advocate's claim that the tenant's behaviour is "normally that way" when it was described by the landlord as nervous, as I find the conversation with AK proved otherwise. I find the tenant appeared to look both nervous and suspicious by looking back at the stairwell door, while the tenant was taking care packages without

permission, especially during a pandemic, when such behaviour should have not occurred at all.

Therefore, I do not find it necessary to consider any other causes or further evidence as I am satisfied that the landlord has met the burden of proof on the civil standard and considering that I find the tenant is not credible. I find that the tenant has significantly interfered with other occupants by taking four care packages, which did not belong to the tenant, and which occurred during a pandemic.

Section 55 of the Act applies and states:

Order of possession for the landlord

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 to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

Given the above and considering that I have found that the 1 Month Notice complies with section 52 of the Act, I grant that the landlord an order of possession effective **September 30, 2020 at 1:00 p.m.** I have used this date as the landlord confirmed that money has been paid for use and occupancy for September 2020.

I find the tenancy ended on August 31, 2020, which was the effective date of the 1 Month Notice.

Conclusion

The tenants' application has been dismissed without leave to reapply.

The landlord has been granted an order of possession effective September 30, 2020 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on August 31, 2020.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 10, 2020

Residential Tenancy Branch