



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding First Service Residential BC LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On August 4, 2020 the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking to cancel a One Month Notice to End Tenancy dated July 28, 2020 ("the One Month Notice").

The matter was set for a conference call hearing. Both parties attended the hearing and provided affirmed testimony and were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. 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*.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated July 28, 2020 pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 15, 2019. The Tenant is required to pay rent in the amount of \$975.00 to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$487.50. A copy of the tenancy agreement was submitted in support.

The Landlord's Agent testified she served the Tenant with the One Month Notice on July 28, 2020 with an effective vacancy date of August 31, 2020 by posting it on the Tenant's door. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice is;

"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 and safety or lawful right of another occupant or the landlord, and put the Landlord's property at significant risk."

"Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so."

The Landlord's Agent stated that she is seeking to end the tenancy on the basis that the Tenant's son is a known criminal who attends the rental property frequently. The Landlord's Agent stated that in December 2019, the Tenant's son was alleged to have entered a rental unit at the rental property and stole a watch from another occupant.

The Landlord's Agent stated that the Tenant has been cautioned about having his son return to the rental property as a result. Furthermore, the Landlord's Agent stated that the Tenant agreed to the crime free addendum to the tenancy agreement. The Landlord's Agent stated that in July 2020, the Tenant's son was seen returning to the rental property before being forcibly arrested by Police at the front door of the rental property. The Landlord submitted a video clip of the arrest in support. The Landlord's Agent stated that the other occupants and staff at the rental building are scared for their safety.

In response, the Tenant's advocate stated that the Tenant is a senior, who was not aware of his son's criminal history. The Tenant's advocate stated that the Landlord has presented no evidence confirm that the Tenant's son entered another rental unit, or committed a theft at the rental property. Furthermore, the Tenant's advocate stated that the Landlord provided no evidence that the Tenant's son was convicted for the alleged theft.

The Tenant's advocate stated that the Tenant's son has his own residence and is only a guest, visiting the Tenant occasionally. The Tenant's advocate stated that the Tenant's son was arrested at the rental property relation to an incident that did not take place at the rental unit. The Tenant's advocate stated that the Tenant will no longer permit his son from returning to the rental property and wishes to continue his tenancy.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on July 28, 2020 with an effective vacancy date of August 31, 2020 by posting it on the Tenant's door. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord is seeking to end the tenancy on the basis 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, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the Landlord's property at significant risk. Furthermore, the Landlord is seeking to end the tenancy on the basis that the Tenant has breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

In this case, I accept that the Tenant's son was apprehended by the Police at the rental property., I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant or his guest have committed any criminal offences at the rental property. While the Tenant's son being apprehended at the rental property is concerning, I find that the Landlord has provided insufficient evidence to demonstrate that it has significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the Landlord's property at significant risk to the extent that the tenancy should end.

Furthermore, the Landlord is seeking to end the tenancy on the basis that the Tenant has breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has breached a material term of the tenancy agreement.

Nevertheless, the Tenant is now warned that increased incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy.

In light of the above, I cancel the One Month Notice, dated July 28, 2020.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated July 28, 2020 is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: September 11, 2020

Residential Tenancy Branch