



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT

Introduction

This hearing dealt with the tenant's application pursuant to 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 the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

LM, agent for the landlord, represented the landlord in this hearing. 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 confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

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The tenant confirmed receipt of the 1 Month Notice dated August 24, 2020. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

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 recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began in April 1, 2019, with monthly rent currently set at \$1,640.00 per month, payable on the first of each month. The landlord collected a security deposit in the amount of \$800.00, which they still hold. The tenant continues to reside in the rental suite.

The landlord issued a 1 Month Notice to End Tenancy August 24, 2020, providing the following grounds:

1. The 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.

The landlord is seeking an Order of Possession as the tenant has been involved in multiple violent incidents that involve assault or intimidation of other tenants in the building. The landlord provided details of three incidents as noted on the 1 Month Notice on April 27, 2019, September 15, 2019, and August 14, 2020. The first incident in April of 2019 involved a fight with another tenant SK. The landlord provided a statement from another tenant, DS, dated August 21, 2020 who stated that the named tenant had threatened to beat him up on September 15, 2019. This tenant stated that he had observed the April 27, 2019 incident, and therefore does not feel comfortable living at the building. AW testified in the hearing about the latest incident on August 14, 2020. AW testified that an argument ensued over money owed, and the tenant had hit him over the head, knocking him out. SK provided a statement dated August 20, 2020 stating that he was present for the August 14, 2020 incident. SK stated that he witnessed the argument over the money, and immediately left. SK stated that he returned less than 10 minutes later to find the door open, and AW “knocked out on the couch with a big lump on his cheek bone”. SK provided a further statement dated August 21, 2020 about the April 27, 2019 incident. SK stated that the tenant had attacked him, and since that day has been fearful for his safety.

The landlord included the three warning letters sent to the tenant dated September 17, 2019 which describes the April 27, 2019 and September 15, 2019 incidents; another warning letter dated August 20, 2020 describing the August 14, 2020 incident, and a letter dated September 28, 2020 about a further incident that took place on September

26, 2020 after the 1 Month Notice was issued on August 24, 2020. The landlord states in the letter that the tenant was involved in another incident which involved an altercation and the threatening of other tenants in the building. The landlord is concerned that the tenant continues to engage in threatening behaviour towards other tenants, and is an immediate and ongoing threat to the safety and well-being of others. The tenant disputes the statements of the landlord and other tenants, and testified that he had only acted in self-defence. The tenant testified that SK is a much larger man than he is, and SK had assaulted him. The tenant also denies threatening DS, and that he had believed that he and DS were on good terms. Lastly, the tenant denies assaulting AW, or taking any of his personal belongings.

The tenant provided three statements in his evidentiary materials. CR, the tenant's partner, provided a statement dated September 28, 2020. CR stated that she was in the rental unit on April 27, 2019 when the tenant had returned and relayed the incident involving SK. CR stated that the tenant had a cut above his left eye, and his glasses were broken. CR relayed the incident as told to her by the tenant on that day.

The tenant also provided a character reference dated October 9, 2020 from a person, AW, who has known the tenant for six years. AW wrote that she had visited the tenant frequently, and has always been kind and courteous, and has witnessed the tenant helping out other tenants. AW wrote that she has witnessed the other tenants in a highly intoxicated state.

The third statement, stated October 7, 2020, is from another tenant, TH, who heard the commotion from the April 2019 incident. TH stated that she had looked outside and saw SK "on top of another man beating him up". TH wrote that she did not know the tenant at the time. TH wrote that she was also present for the September 2019 incident, and that the other tenant, DS, came out of his rental unit and yelled at TH and the tenant that they were too loud. TH wrote that the tenant and DS "were yelling back and forth at each other" but that she did not recall the tenant threatening to beat up DS.

The landlord's agent expressed concern that despite the fact that the tenant provided statements in his evidentiary materials, these parties were not present and available for cross examination. The landlord also questioned the weight of the character reference provided by a non-resident, as well as the statements of the other two parties.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute

resolution with the Residential Tenancy Branch. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the sworn testimony of both parties as well as the written evidence submitted for this hearing. Despite the fact that the tenant disputes his involvement in the incidents as described by the landlord and witnesses, I do not find the tenant's submissions to be convincing or persuasive. I find that the tenant's accounts to be dismissive in nature, and involves the complete denial of his involvement in the incidents despite the fact that are multiple witness accounts that confirm his engagement in the incidents, whether he had initiated them or not.

I find that the landlord had provided supporting evidence to support that the tenant has been involved in multiple incidents that involve threatening behaviour by the tenant towards other tenants, including one incident that involved an alleged assault. Although the tenant was not formally charged, I find that the landlord has met their evidentiary burden on a balance of probabilities that the tenant not only continues to engage in threatening behaviour towards other tenants, but that the behaviour has escalated to a level that now threatens the physical well-being of others in the building.

I find that despite being sent several warning letters dating back to September of 2019 the behaviour has continued, with another incident that took place after the 1 Month Notice was issued. I find that the tenant poses a continued and significant threat to other tenants and occupants in the building.

I have considered the fact that the tenant has resided there less than two years, but has been involved in multiple incidents with several tenants, of which resulted in physical harm to the tenant. Under these circumstances, I find that the landlord has provided sufficient evidence to support that this tenancy should end on the grounds provided on the 1 Month Notice. Accordingly, I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy.

As the tenant was not successful with their application, I also dismiss the tenant's application to recover the filing fee without leave to reapply.

Section 55(1) of the *Act* reads as follows:

- 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.

I find the 1 Month Notice dated August 24, 2020 to be valid, and complies with section 52 of the *Act*.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. 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 within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's entire application without leave to reapply.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant 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: October 29, 2020

Residential Tenancy Branch