



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding William Nemetz Investments Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with the tenant's 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 the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by family members.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

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

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in January 1979. The current monthly rent is \$885.00 payable on the first of each month. The rental unit is a suite in a multi-unit building.

The parties agree that the landlord issued the tenant a 1 Month Notice dated September 16, 2020 providing the reasons for the tenancy to end as:

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 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 provided the details of the reasons as the tenant has taken packages from the common mailbox area on two occasions. The first, occurred on August 2018 when the tenant took and consumed the beverages inside of the package. The landlord submits that they confronted the tenant about taking the items which they acknowledged and paid to replace the value of the items consumed.

The second instance occurred on August 17, 2020 when the tenant took a Canada Post package addressed to a neighbor from the mailbox area. The package was never delivered to the addressee who made a complaint to the landlord. The landlord said that they reviewed the video security footage and saw the tenant taking the package from the mail area.

The tenant submits that in both instances they believed they were authorized to take the items left in the common areas. The tenant says that for the items they took in August, 2018 they believed them to be left in the common area and made available for anyone to take. The tenant says that on August 17, 2020 they took the package and were delivering it to the door of the addressee.

Analysis

Section 47 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

Based on the totality of the evidence I find that the landlord has met their evidentiary onus to establish that there is a basis for this tenancy to end. I find that the act of taking items that do not belong to them from the common area to be an interference with the rights of others. There is no question that the tenant exercised control of items over which they had no ownership interest. The tenant's actions meets the definition of the tort of conversion and I find the tenant's testimony that they believed they were permitted to either consume items or deliver them to have little merit.

In both instances cited by the landlord I find that there was no representation that the tenant could or ought to take the items left in the common area. I do not find the written statements submitted by other occupants of the building stating that they too have taken items and mail from the common area to be persuasive. The fact that others commit offenses does not negate the fact that the tenant's actions were a tortious interference. I do not find sufficient evidence that the act of taking items out of the common area became an acceptable practice or that the tenant was permitted to do so during the tenancy.

Based on the evidence of the parties in each of the two instances when the tenant took items that were not theirs, the landlord contacted them to advise them of the unacceptable nature of their conduct. Even if the tenant earlier believed that they were permitted to take any items found in the common area, they were advised in August 2018 that they should not take items they had no ownership rights over from the common area. Based on the tenant's own evidence they were advised in unambiguous terms that the items they took and consumed was not theirs to take. The tenant's subsequent conduct in taking a package which, by their own testimony, clearly indicated the addressee, demonstrates that they disregarded property rights in taking the package.

While the tenant submits that they were merely delivering the package to the doorstep of the addressee, the tenant had no right to do so. The landlord's submission is that the package was never delivered to the intended addressee and was last seen in the possession of the tenant. I find the reasonable conclusion to be drawn from the totality of the evidence is that the tenant caused the package to not be delivered as intended.

I find the submissions of the tenant and their explanation of their reason for taking the items to show a profound misunderstanding of property rights and a lack of remorse or contrition for the individuals whose property was made unavailable due to the interference of the tenant.

I find that act of taking items from the common area and mail area of the rental property to constitute a significant interference of the other occupants and landlord and an inherently illegal act that jeopardizes the lawful rights and interests of others. I am satisfied that the tenant's conduct has given rise to a basis for this tenancy to end.

I find that the landlord has provided sufficient evidence to demonstrate that there is cause for issuing the 1 Month Notice and accordingly dismiss the tenant's application.

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

Accordingly, I issue an Order of Possession in the landlord's favour. As the effective date of the 1 Month Notice has passed, I issue an Order enforceable 2 days after service on the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants 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: November 16, 2020

Residential Tenancy Branch