



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kim Van Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- An order to cancel the landlord's 1 Month Notice for Cause (the "Notice") pursuant to section 47 and 55 of the Act.

The Building Manager (who is also the business owner) and the tenant attended the scheduled hearing. The tenant testified he served the Notice of Dispute Resolution Proceedings by registered mail and the Building Manager confirmed receiving it. Based on the testimonies of the parties, I find the landlord was served with the Notice of Dispute Resolution Proceedings in accordance with sections 89 of the *Act*. The tenant did not submit any evidentiary material and solely relied on his testimony and the testimony of his witness to support his claim.

The Building Manager served the tenant their evidence by placing it in the tenant's mailbox on November 7, 2020; the tenant stated that his friend picked up the evidence from the mailbox and returned it to the Building Manager on the same day. The Building Manager testified that she also served their evidence to the tenant personally at the tenant's apartment following the return of the evidence from the mailbox. The tenant agreed that he received the evidence but stated that he did not look at it. When asked why his friend returned the evidence, the tenant stated that his friend wanted to protect him from getting angry. In accordance with section 88 and 90 of the *Act*, I find the tenant was properly served with the landlord's evidence.

I explained the hearing process to the participants and gave them an opportunity to ask questions. The parties were also given an opportunity to present affirmed

testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing.

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 / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice pursuant to section 47 of the *Act*?
- If the tenant fails in this application, is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

This was a 50-minute-long hearing in which the parties disagreed in many aspects of each other's testimonies and interrupted each other on a number of occasions. I cautioned the parties to allow each other to speak uninterrupted at least three times.

This month to month tenancy started on September 1, 2020. Rent is set at \$850/month. The tenant has lived in the rental unit since August 2017 as the room roommate of a former tenant. The tenant paid a security deposit in the amount of \$425 in August 2017. The current landlord took over this property on September 1, 2020 and holds the tenant's security deposit.

The parties agreed that the Building Manager served the tenant with the Notice in person on September 18, 2020. The stated grounds on the Notice are:

The tenant has allowed an unreasonable number of occupants in the unit/site.
The tenant or a person permitted on the property by the tenant has
Significantly interfered with or unreasonably disturbed another occupant or the landlord.
Put the landlord's property at significant risk.
Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The Building Manager testified that she has received many complaints about the tenant's behaviour and his guests and has personally witnessed the tenant engage in disturbing behaviour. The Building Manager provided documentary and video evidence that the tenant has caused unreasonable disturbances with tenants in four other units

since at least July 2020. Most of the documented disturbances have taken place during the month of September 2020. The Building Manager also testified and submitted into evidence three warning letters for separate incidents that occurred on September 14, 15 and 16, 2020. The caution notices warn the tenant about “harassing actions towards the owner of the building”; “causing disturbance in the apartment, incessant yelling and out of control drunken behaviour”; “play loud music into the night that wake up his neighbours ...and frequently get into fight and punching a wall in the apartment”.

The Building Manager testified that she works on site during the day and that since September, she has witnessed the tenant bringing at least five homeless people into the building and into his unit, in separate occasions. The Building Manager is concerned that the numbers of people being allowed into the building place other tenants’ and the landlord’s property at risk.

The Building Manager testified that since issuing the Notice, the tenant continues disturbing other tenants by yelling, banging and pounding on the walls at all hours. The Building Manager asserts that many of the tenants in the building are seniors and report being afraid of the tenant.

The Building Manager also testified that the tenant is allowing a roommate to live in the unit without the landlord’s consent, contrary to what is stipulated in the tenancy agreement. The tenant denied this and stated that he has a friend that comes and checks on him and that sometimes the friend stays overnight.

The Building Manager submitted into evidence thirteen letters from four different rental units in the building, outlining the tenant’s ongoing disruptive behaviours and corroborating the Building Manager’s testimony.

The tenant testified that he has lived in this building since 2017 and that his roommate left him a couple of months ago. The tenant described himself as a very sick person who had to spend time hospital in March. The tenant further testified that since his girlfriend left, he has had many problems with other tenants in the building but particularly with the tenants on each side of his unit. He feels terrorized by one of his neighbours, whom he thinks has Post Traumatic Stress Disorder because the neighbour gets easily startled by his noise.

The tenant and his witness stated that the tenant can not be faulted for letting homeless people into the building, as the front door is broken and does not lock. The Building

Manager denied this and when questioned, the tenant and the witness stated that the door locks properly but continued to claim that at some point it did not lock.

The tenant's witness testified that he is not staying in the tenant's unit permanently but rather that he comes to visit the tenant at the request of the tenant's friend who is concerned about the tenant's health.

The tenant asked that in making my decision, I consider that he has no family or friends and that he is in poor health.

I offered the parties an opportunity to settle their disputes unsuccessfully.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy was based.

Section 47 of the *Act* provides that upon receipt of a Notice To End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an Application for Dispute Resolution with the Residential Tenancy Branch. I find the tenant filed to dispute the notice on September 22, 2020 within the ten days as required by section 47.

As the tenant filed to dispute the landlord's notice, the landlord bears the burden to prove on a balance of probabilities, the validity of the grounds for issuing the Notice pursuant to section 52 of the *Act*.

Section 52 of the *Act* states that:

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
(e) when given by a landlord, be in the approved form.

I find that the form and content of the Notice met the requirements of section 52 of the *Act*.

The landlord provided two videos as well as 13 letters from four different units documenting the tenant's abusive behaviour. The landlord's testimony is credible and supported with evidence. The tenant was provided with three warning letters clearly outlining the inappropriate behaviour which he engaged in on September 14, 2020, September 15, 2020 and September 16, 2020; which he failed to correct and continued to display until at least October 2, 2020 as documented by complaints submitted into evidence by the landlord.

Based on the oral testimony and documentary evidence presented before me as detailed above, and applying the law to the facts, I find that on a balance of probabilities the landlord has met the onus of proving the grounds on which the Notice was issued. That is to say that the tenant has allowed an unreasonable number of people into the unit/site/property/ and has significantly interfered with or unreasonable disturbed another occupant or the landlord; and adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. Therefore, I uphold the landlord's Notice.

As I found that the landlord served the tenant with a Notice to end tenancy that complies with the *Act* and as I have determined that the landlord has proven her case, I uphold the notice to end tenancy. Under the provisions of section 55, I must now issue an order of possession as the tenant failed in his claim. Therefore, this tenancy must end and I issue an Order of possession.

The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court

While I appreciate that the tenant has suffered medical issues that required hospitalization in March 2020, his actions in September and October of 2020 are in breach of the tenancy agreement and the *Act*. Furthermore, I have no discretion to excuse him from the requirements of the *Act*.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective **five days** after service on the tenant.

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 26, 2020

Residential Tenancy Branch