



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on November 5, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

The Tenant attended the hearing and provided testimony. The Landlord was represented at the hearing by two agents and employees (collectively referred to as the Landlord). All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions.

The Landlord confirmed receipt of the Tenant's application and evidence. The Tenant confirmed receipt of the Landlord's evidence package, including the USB stick, with digital videos. The Tenant stated that she was unable to view the digital evidence on the USB stick because she does not have a computer. The Landlord stated that they also provided copies of all this evidence to the Tenant's advocate. The Landlord did not provide any evidence showing they confirmed that the Tenant was able to access the digital evidence. The Landlord stated that the Tenant should have taken more steps to try and view the files, and noted that there is a computer room in this housing facility which Tenants have access to.

I turn to the following Rule of Procedure:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

I note there is insufficient evidence to demonstrate that the Landlord specifically asked the Tenant or her advocate if they could view the files. Without further evidence to show that this occurred, I find the Landlord has not complied with the above noted Rule. As such, I find the Landlord's digital evidence (videos) are not admissible. Since the Tenant confirmed receipt of the physical documentary evidence included in the same package which contained the USB stick, I find this part of the Landlord's evidence is admissible.

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.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of testimony during the hearing in relation to multiple different issues with the tenancy. The Landlord stated that there is an issue with: 1) noise, 2) several issues where the Tenant caused property damage and, 3) the Tenant's harassment of another tenant in the building (after using drugs). Although both parties spoke to all of the above noted issues, I will only address the facts and evidence which underpin my findings and I will only summarize and speak to points which are essential in order to determine whether or not there is cause to end the tenancy. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings. In this case, the Landlord identified that the most concerning issue is regarding the harassment of another occupant in the building. This is what most of the testimony and evidence focused on. As such, this issue, and related evidence, will be the focus of my decision.

The Landlord stated they posted a copy of the Notice on the Tenant's door on September 8, 2020. Proof of service was provided into evidence. The Landlord stated that they also personally gave the Tenant a copy of the Notice on September 17, 2020. The Tenant stated that she didn't get the Notice until September 17, 2020. However, the Tenant applied to cancel the Notice on September 14, 2020. When I asked the Tenant how she could have applied to cancel a Notice that she hadn't yet received, she responded by saying that she "doesn't recall any dates", and that it's all a blur.

This Notice was issued for Cause as follows:

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.
- put the Landlord's property at significant risk.

Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:

- damage the Landlord's property.
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- jeopardize a lawful right or interest of another occupant or the Landlord.

The Landlord stated that the Tenant has a long history of using drugs, being loud, disrespecting others in the building and damaging the building. The Landlord stated that their biggest concern is regarding the Tenant's continued harassment of another Tenant who lived on a floor above her. More specifically, the Landlord stated that on July 9, 2020, the Tenant was video recorded (via the hallway cameras) shooting hard drugs in the hallway outside another occupant's unit. After using drugs, the Landlord stated that the Tenant was observed yelling at the other occupant's door, kicking their door, and then stabbing her used needle into the door where this other occupant resides. The Landlord stated that several minutes later, the Tenant was seen tampering with security cameras as she left. Later, the Tenant was observed writing, in lipstick, on this other occupant's door. The Landlord stated that this other occupant feels threatened, and very unsafe from all the Tenant's aggressive actions.

The Tenant denied causing any property damage, and stated she is "friends" with the occupant who the Landlord claim she is harassing. The Tenant acknowledged doing drugs in the hallways, and also noted that she has a history of doing "benzo's" and "fentanyl" combined. The Tenant stated that she "doesn't remember much" and stated she has been struggling with addiction. The Tenant denied most of the Landlord's allegations, but also stated she didn't recall any of the details. The Tenant pointed out that she just doesn't have any recollection of harassing the other occupant, although the Tenant did acknowledge putting lipstick on her door.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy. More specifically, since my findings hinge on the harassment issue, it is not necessary to speak to, resolve and address the other issues with respect to the fire in the rental unit and the smoking on the balcony.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

Credibility and Reliability of the Tenant's Evidence and Testimony

First, I find it important to assess the reliability and credibility of the evidence and testimony. Generally, I found the Tenant's versions of events to be vague, and lacked veracity. The Tenant denied "harassing" the other occupant in the building, but also acknowledged writing on her door with lipstick. The Tenant appears to remember some of the details but she does not recall the vast majority of what occurred on July 9, 2020. The Tenant acknowledged doing drugs, including fentanyl and other hard drugs, and admitted that, although she doesn't *believe* she did what the Landlord is alleging, she does not recall, since she "does not remember much." Ultimately, I find the Tenant's version of events is unreliable. I find the Landlord has provided a more clear, detailed, and compelling version of events. As such, I have placed more weight on the Landlord's version of events.

Next, I turn to the first ground indicated on the Notice:

1. Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

Although the Landlord's video evidence is not admissible, as stated previously, the Landlord has provided clear and consistent testimony regarding what happened on July 9, 2020. The Landlord stated that the harassment issue, specifically on July 9, 2020, is one of many issues with the Tenant. I have reviewed the evidence and testimony on this matter, and I accept the Landlord's version of events. I find it more likely than not that the Tenant used drugs in common hallway areas. I accept that this occurred in the hallway outside the other occupant's door. Further, I also accept that the Tenant caused significant distress to that occupant when she kicked the door, jabbed a used needle into the door, and wrote on the door with lipstick.

I find there is sufficient evidence to show that this other occupant was unreasonably disturbed by the Tenant's behaviour and I find the Landlord has sufficient grounds to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

Further, given my findings thus far, it is not necessary to consider the other grounds on the 1 Month Notice.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 05, 2020

Residential Tenancy Branch