



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, FFT**

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; 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 landlord was assisted by a family member.

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

At the outset of the hearing the tenant confirmed that they were not served with a 10 Day Notice and completed their application in error. They confirmed that they were served with a 1 Month Notice and made an application to amend their application accordingly. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as both parties confirmed that there was a 1 Month Notice not a 10 Day Notice issued, and there is no prejudice to the parties I amend the application accordingly.

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 the 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 March 2012. The current monthly rent is \$900.00. A security deposit of \$325.00 and pet damage deposit of \$100.00 were collected and still held by the landlord.

The parties agree that there was a physical altercation between them on Oct 14, 2020. The parties each say that the other was the aggressor. The parties agree that the incident began with verbal confrontation occurring in the backyard of the rental property when the landlord was removing some fencing materials. The parties agree that the tenant emerged from their rental suite to confront the landlord in the backyard about the removal of the materials. The confrontation escalated into a physical incident with the parties pushing one another and blows being exchanged.

The tenant characterizes the landlord as the aggressor, testifying that the materials the landlord was attempting to remove is their personal property and that there is a history of the landlord removing tenants' possessions without authorization. The tenant submitted into evidence photographs of the yard and parts of their body which they say show bruising from the altercation. The tenant claimed that another occupant of the rental property witnessed the incident but failed to call them as a witness nor did they provide any third-party materials in support of their version of events.

The landlord says they were doing work on the rental property when the tenant began yelling at them from their rental suite and charged out to shove and punch the landlord. The landlord testified that they are unaware of any witnesses to the incident.

The landlord issued a 1 Month Notice dated October 23, 2020 indicating the reason for the tenancy to end is that tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord citing the incident of October 14, 2020.

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. In the matter at hand the landlord must demonstrate that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The parties are agreed that there was an altercation on October 14, 2020 involving the tenant and the landlord. The parties agree that the incident involved a physical altercation with shoving and punches thrown. I find that a fight is by its very nature conduct that seriously jeopardizes the health and safety of the parties involved.

The tenant submits that they were the victims of unwarranted aggression by the landlord but I find there is insufficient evidence in support of their version of events. The parties are clear that the tenant was in the rental unit when the incident began and they exited the building, came across the backyard to confront the landlord at the fence. I do not find the description of the location of the parties to demonstrate that the tenant was an unwilling victim but the one who emerged from their position, moved purposefully across a yard to confront and instigate the incident. I do not find the description of the confrontation to portray the actions of the tenant as reasonable, proportional or one where they are the wronged party. I find the evidence to be more consistent with a tenant who caused a confrontation rather than a victim who was assaulted by the landlord. I find the landlord's position that they were doing work in the rental premises when they were yelled at by the tenant who approached them and initiated the confrontation to be more credible and reasonable.

I draw an adverse inference from the tenant's submission that there was a witness to the incident whom they failed to call or submit any statements as to how the confrontation occurred.

Taken in its entirety I find that the evidence of the parties demonstrates that there was a physical altercation. I find that the landlord has provided sufficient evidence to demonstrate that the tenant caused serious jeopardy to the health and safety of others by escalating a confrontation into a physical fight. I do not find the tenant's explanation that they were the victims of an assault to be convincing or supported in the evidence.

Even if I were to accept the tenant's submission that the landlord began the altercation, I do not find that the tenant's response to have been proportional, reasonable or justified. I find that engaging in a physical fight is an act that seriously jeopardizes health and safety and is reasonable basis for a tenancy to end.

I find that the landlord has sufficiently shown on a balance of probabilities that the tenant has engaged in actions that have jeopardized the health and safety of others. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' 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.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession

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 tenant**. Should the tenant 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: January 22, 2021

Residential Tenancy Branch