



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, OLC, LRE, PSF, AAT

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The landlord's agents, IO, JL, and MG ('landlord') attended this hearing. The tenant attended with his mother and support worker. Both parties 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.

The tenant confirmed receipt of the 1 Month Notice dated January 6, 2021. Accordingly, I find that the 1 Month Notice was deemed served to the tenant in accordance with sections 88 and 90 of the *Act* on January 9, 2021, 3 days after posting.

The tenant filed for more time to file their application pursuant to section 66 of the *Act*. 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 their application within the time required by the *Act*, the tenant's application for more time to file their application is not required, and is therefore cancelled.

Issues(s) to be Decided

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 an order for the landlord to comply with the *Act*?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental units?

Is the tenant entitled an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

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 on December 1, 2017. The tenant pays a portion of the subsidized monthly rent, with the tenant's portion currently set at \$375.00, payable on the first of the month. The landlord collected, and currently holds, a security deposit in the amount of \$461.00.

On January 6, 2021, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause indicating the following reason: "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 testified that the tenant resides in a special building that houses at risk tenants, and uses a harm reduction model. The landlord testified that there are 99 units, which house 103 tenants in the building, which includes transitional housing for youth. The landlord testified that policies are in place which address violence, criminal behaviour, and guest control to ensure the safety of the residents and staff.

The landlord testified that the reason why the tenant was served with the 1 Month Notice is that despite the landlord's attempts at trying to work out a resolution with the tenant, the tenant continues to allow unauthorized individuals into the building through an exit door. The landlord submitted detailed documentation of the events, which have continued even after the 1 Month Notice was issued. The landlord testified that a meeting was held on September 24, 2020 with the tenant and tenant's mother in order to save the tenancy, but the tenant has continued to contravene the rules despite the meeting, the 1 Month Notice, and the repeated warning letters. The landlord testified that the police have been called on multiple occasions, and have resulted in the police being threatened by the tenant.

On February 2, 2021, the tenant was found to be in possession of a small axe he had purchased from an unidentified male, which is in contravention of the building's policies as the axe is considered a weapon.

The tenant's mother attended the hearing, and noted that her son suffers from very serious mental health issues and physical disabilities. As the mother is currently located in another province, the mother is unable to assist her son on a daily basis. The tenant's mother testified that she has written countless letters in an attempt to move the tenant to housing with better care, but has been unsuccessful. The tenant's mother testified that the tenant had purchased the axe as a gift for her, and was not intending to use the axe as a weapon. The tenant's mother testified that her son is not a violent person, but requires more time to find more suitable housing with access to the help he needs.

The landlord testified in the hearing that they would be unable to extend the effective date of the 1 Month Notice, and are requesting the standard Order of Possession if the 1 Month Notice was upheld.

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 evidence before me, and I find that the landlord has provided sufficient evidence to support that the tenant's actions have, and continue to, seriously jeopardize the health or safety or lawful right of the tenants in the building, as well as the staff who work there. It is clear that despite the repeated warnings to the tenant, the tenant continues to engage in similar behaviours, with a recent incident that involves a weapon, or an object that could be used as a weapon.

I have considered the submissions of the tenant, and his mother, and the fact that the tenant suffers from serious disabilities and mental health issues. I have given significant consideration to the challenges that the tenant faces in his day to day life, and the fact that the tenant and his mother have been working on finding the tenant new and suitable housing. I am aware of the impact that the termination of this tenancy would have on the tenant, especially considering the circumstances of the tenant and his mother, who supports him. I must, however, consider the health and safety of the other tenants and staff in the building. In this case, I find that the landlord has met the burden of proof to support that the fact that despite the landlord's efforts to work with the tenant and tenant's mother to extend this tenancy, the tenant is either unable, or unwilling, to abide by the rules that have been clearly set for this tenancy and communicated to the tenant. As the landlord noted in their submissions, the tenant resides in a type of building that houses many other tenants, and where compliance with the rules and policies in place are important to ensure the safety of all the occupants and staff in the building. I find that despite the involvement of police, the tenant has not acknowledged the significant threat that his actions pose to others in the building, and I am not confident that the tenant will stop engaging in the same behaviour. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy.

In this case, I find that the landlord

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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application to cancel the 1 Month Notice, and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, February 28, 2021. I find that the landlord is entitled to a 2 day Order of Possession. 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.

As this tenancy has come to an end, I dismiss the remainder of the tenant's application without leave to reapply.

Conclusion

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of February 28, 2021.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) 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: April 19, 2021

Residential Tenancy Branch