



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORTLAND HOTEL SERVICES
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package in person. The tenant did not submit any documentary evidence. The landlord's agent(s) (the landlord) stated that the tenant was served with the 2 documentary evidence files in person on January 12, 2021. The tenant confirmed receipt of this package. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenant's application was clarified. The tenant also requested an order for the landlord to comply. The tenant provided written details which states:

Withdraw application to end tenancy for cause because conditions of sec. 47 RTA were not met.

[reproduced as written]

The tenant was unable to provide any details or an explanation of why this was selected or what she wanted. The tenant stated that she was assisted in selecting this request, but is unable to provide any details. After some lengthy discussions, the tenant stated that this selection was made in error and could be cancelled. The landlord confirmed their understanding. As such, no further action is required for this portion of the application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Extensive discussions also took place as both parties had failed to provide a copy of the notice to end tenancy in dispute. Both parties were advised that the notice is not a trivial piece of information. It is the foundation that a landlord relies on to assist in their application to end a tenancy when there is cause. It is also the basis for a tenant to dispute the reasons for the notice in this application that was filed. Discussions took place and both parties were able to agree to the contents of the notice before them. On this basis the hearing continued.

Both parties agreed the 1 Month Notice in dispute is dated January 12, 2021 and was served by the landlord to the tenant on January 12, 2021 in person. The 1 month notice dated January 12, 2021 sets out an effective end of tenancy date of February 11, 2021 and three reasons for cause were selected by the landlord.

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.

Both parties agreed that the substance of the details of cause were on January 7, 2021 police attended the premises, in particular unit #217 looking for a third party, which the

landlord has identified as G.G. a suspected dangerous non-resident hiding in the rental unit. Both parties confirmed the police attended with a search warrant which was executed and an individual named G.G. was witnessed as exiting the rental unit and arrested by police after, a “flash bomb” was used. The landlord referred to the “Manager’s Statement” who had witnessed, G.G. exiting the tenant’s rental unit. The landlord stated that the presence of police and the subsequent arrest has greatly disturbed the other residents and the landlord’s staff. The landlord also stated that extensive damage was found afterwards in which a “tunnel had been carved out of the wall leading into room next door and also an external locking system had been added to the inside of the door, effectively barring staff, fire, police or any other emergency responder from accessing the room.” The landlord stated that all staff and building residents were restricted in the building.

The tenant argued that the landlord’s claims are “untrue”. The tenant stated that she was not present in the unit, but in a different unit with a friend. The tenant did however, confirm in her direct testimony that she had brought G.G. into the building approximately 1 week prior to the incident on January 7, 2021. The tenant also argued that the “damage” or “tunnel” was present prior to her moving into the rental unit. The tenant stated that this was reported numerous times to the landlord and that the landlord never responded or had taken any action to this claim.

During the hearing the landlord’s clarified that they had incorrectly provided the effective end of tenancy date of February 11, 2021 as they had calculated this for 30 days. Both parties were advised that this was a “1 Month Notice” and that there was no such thing as a “30 day notice”. Section 53 of the Act provides for incorrect effective dates to be automatically changed. Both parties were advised of such, and the new effective end of tenancy date was February 28, 2021.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Both parties confirmed the landlord served the tenant with a 1 month notice dated January 12, 2021 in person on January 12, 2021.

In this case, the landlord claims that the tenant permitted a person, G.G. on the property who caused the police to attend by significantly interfering with or unreasonably disturbing another occupant or the landlord and/or seriously jeopardized the health or

safety or lawful right of another occupant or the landlord. The landlord stated that the Tenant and/or G.G. was wanted by the police and arrested. The landlord stated that the use of a “flash bomb” by the police had significantly interfered with or unreasonably disturbed the landlord and the other residents of the building. Despite the tenant disputing these reasons for cause, the tenant did admit that she gave access to G.G. into the rental building approximately 1 week prior.

On the landlord’s claim that the tenant had put the landlord’s property at significant risk, the landlord has claimed that a “tunnel” had been carved out of the wall leading into the room next door and that an external locking system had been added to the tenant’s door preventing access. Despite the tenant’s claims that the damage or “tunnel” was pre-existing to the start of her tenancy, the tenant was not able to provide any supporting evidence of this damage reported to the landlord. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. On this basis, the tenant’s application is dismissed. The landlord’s notice to end tenancy dated January 12, 2021 is upheld. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date has now passed.

Conclusion

The tenant’s application is dismissed.
The landlord is granted an order of possession.

This order must be served upon the landlord. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and 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: April 19, 2021

Residential Tenancy Branch