



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

On February 1, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing with A.G. attending as an advocate for the Tenant. M.P. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing and evidence package by registered mail on February 11, 2021 and M.P. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

M.P. advised that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenant's Application with respect to the Notice and the other claim was dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy agreement started on February 15, 2017, that the subsidized rent is currently established at \$526.00 per month, and that it is due on the first day of each month. A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that the Notice was served to the Tenant by being posted on her door on January 22, 2021. The reasons the Landlord served the Notice are because:

- There are an unreasonable number of occupants in a rental unit;
- The Tenant or a person permitted on the residential property by the Tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property,
 - Seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, or
 - Put the Landlord's property at significant risk;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that:
 - Has caused or is likely to cause damage to the Landlord's property,
 - Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord;
- The Tenant
 - has failed to comply with a material term, and
 - has not corrected the situation within a reasonable time after the Landlord gives written notice to do so.

The effective end date of the tenancy was noted as February 28, 2021 on the Notice.

M.P. advised that there is a material term in the tenancy agreement prohibiting guests from living in the rental unit for more than 14 days in a month. As well, as the Tenant is housed in subsidized housing, there is a requirement in the tenancy agreement to disclose any other occupants as this will affect the subsidized rent; however, this information was not disclosed by the Tenant. She stated that the Tenant's boyfriend has been living in the rental unit with the Tenant for many months without authorization. She testified that warning letters about this breach of a material term were issued to the Tenant in October and November 2020, and these letters were submitted as documentary evidence. She stated that the Tenant continued to have her boyfriend live in the rental unit despite the warning letters.

In addition, she advised that the Tenant and her boyfriend are a constant, daily source of disruption to the other residents of the building. She stated that the Tenant and her boyfriend scream, yell and fight on a daily basis, that they play loud music and have parties, and that they jumped out of the window on one occasion which prompted a call to the police, who eventually removed the Tenant. She stated that the Tenant and her boyfriend yell threats at each other or other residents of the building, that the Tenant's boyfriend has chased other residents of the building, and that the police have been called an excessive number of times due to their behaviour. Just recently, the police contacted the Landlord because they were investigating the Tenant and her boyfriend regarding a stolen vehicle. She referenced the same two warning letters that were submitted as documentary evidence to support the Landlord's position that the Tenant was warned to correct these issues; however, they are ongoing.

Finally, she stated that the Tenant signed a crime free housing addendum; however, in addition to the above issues, she testified that drug dealers are constantly in the building screaming at the Tenant for money that is owed.

In response, the Tenant advised that her ex-boyfriend would not stay over; however, he is the one that is violent and who had chased other residents of the building. She confirmed that her current boyfriend has been living with her in the rental unit since January 2021, despite being warned in writing by the Landlord that she was not permitted to have extra occupants living there.

A.G. advised that this person was living with the Tenant to assist her with her mental health.

The Tenant advised that in September 2020, she had a relapse and jumped out of her window, causing the police to be called. She was taken off the property by the police. She confirmed that there have been multiple incidents that have happened due to the deterioration of her mental health and that the police have been called often because of it. She acknowledged that she would exhibit aggressive and/or erratic behaviour that would cause a disturbance. She confirmed that they would play loud music and have parties, but instances of this have since been reduced. However, she indicated that she would like to apologize for any disturbances or problems that she has caused in the past. She also stated that she cannot blame all of her actions and behaviours on her mental health.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Furthermore, Policy Guideline # 8 outlines a material term as follows:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

As well, this Policy Guideline states that “To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”

With respect to the reason on the Notice of a breach of a material term, I find it important to note that the Policy Guideline states that “it is possible that the same term

may be material in one agreement and not material in another.” I find that this means that determining what would be considered a material term is based on the fact pattern of each specific scenario, and that it is up to the Arbitrator in each case to evaluate the evidence presented and make a determination on this matter. When reviewing the tenancy agreement, I am satisfied that there is a material term which prohibits extra occupants in the rental unit without the written consent of the Landlord.

The consistent and undisputed evidence before me is that the Landlord provided warning letters to the Tenant on October 6 and November 27, 2020 reminding the Tenant of this material term, and that this needs to be corrected. While the Tenant claims that a person has not been living in the rental unit with her until January 2021, I am doubtful of the legitimacy of this testimony. Even if this were the case, the Tenant confirmed that she received these warning letters regarding extra occupants, and despite knowing that this was a breach of a material term, she still had her boyfriend live in the rental unit with her since January 2021.

When reviewing the totality of the evidence before me, I am satisfied that there is a material term in the tenancy agreement that prohibits occupants in the rental without the written consent of the Landlord. Moreover, I am satisfied that the Landlord has served the Tenant with multiple warning letters advising that there was a problem, that the problem must be fixed by a deadline included in the letter, and if the problem is not fixed by the deadline, the Landlord will end the tenancy. I am also satisfied from the Tenant’s evidence that this occupant has been living in the rental unit since at least January 2021 and still continues to live there.

Ultimately, I find that there is sufficient evidence to justify service of the Notice under the reason of a breach of a material term. In addition to this, the Tenant acknowledged to have engaged in actions and behaviours that I am satisfied would justify an end to the tenancy on many of the other grounds for which the Landlord served the Notice.

As such, I dismiss the Tenant’s Application and pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant. 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 after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenant's Application is dismissed without leave to reapply and the Landlord is provided with a formal copy of an Order of Possession effective **two 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: April 29, 2021

Residential Tenancy Branch