



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Red Door Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated January 21, 2021 ("One Month Notice"), pursuant to section 47.

The landlord's agents DK and BL attended ("the landlord"); DK represented the landlord throughout the 113-minute hearing and BL observed. The tenant attended. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord called the witnesses LM and KM. The tenant called the witnesses CP and JP. The witnesses provided affirmed testimony.

The landlord explained that the landlord is a non-profit housing organization providing low to medium income families with affordable housing operating 12 complexes in the Lower Mainland. The landlord DK confirmed that she was the Manager of Tenant Management and Relations manager for the landlord; she and agent BL are both employed by the landlord company named in this application and DK had authority to speak on its behalf.

The landlord and tenant both intended to call witnesses to testify at this hearing, who were excluded from the outset.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly

served with the tenant's application and the tenant was duly served with the landlord's evidence.

The tenant confirmed receipt of the landlord's One Month Notice on January 21, 2021, by way of posting to the tenant's rental unit door. The landlord confirmed that the Notice was served on January 21, 2021, using the above method. The Notice indicates an effective move-out date of March 31, 2021. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's One Month Notice on January 24, 2021 three days after posting. The Notice is in the standard RTB form and complied with section 52 (form and content).

Settlement discussions took place at the beginning of the hearing. The tenant confirmed that he wanted to proceed with the hearing and for me to decide the matter, rather than agree to a settlement with the landlord. The tenant was given ample time to make this decision. I answered all the tenant's questions regarding the possible settlement and hearing/decision/Order procedures. The tenant was cautioned about the possible outcomes of my decision repeatedly and chose to pursue a hearing of this matter.

Preliminary Issue: Application for Adjournment

At the outset of the hearing, the tenant claimed he was ill, was unable to conduct the hearing, and required an adjournment. The tenant testified that he did not seek medical help for this recent condition, nor did he submit a doctor's report. The tenant submitted no supporting evidence that he was unwell or unable to participate in the hearing.

The landlord objected to the adjournment stating the situation resulting in the issuance of the Notice included violence and verbal abuse towards children by the tenant and included multiple police presence at the complex. The landlord stated that two witnesses were available at the time the hearing started to give evidence. The landlord requested the hearing proceed.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned.

Residential Tenancy Branch Rule of Procedure 7.9 states that, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;

- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

I considered the above tests after the parties each made submissions. I found that an adjournment was unlikely to result in a resolution. I determined that the tenant had failed to take any steps to seek medical help or notify the landlord of any reason for requesting an adjournment. I found that the tenant had not submitted any supporting evidence confirming his illness and consequent inability to proceed with the hearing. I found that the tenant had intentionally neglected to warn the landlord until the hearing started that he was ill.

The tenant acknowledged that he had arranged witnesses to attend at the hearing and they were ready to testify. He was unable to articulate what he would do differently between today and the adjourned date.

I found that the tenant failed to establish that the adjournment was necessary to provide him with a fair opportunity to prepare.

I found there was possible prejudice to the landlord and other occupants of the complex in which the unit is located because of alleged ongoing abuse requiring police attendance.

Considering all the evidence and the above tests, I accordingly denied the application for an adjournment and the hearing continued.

At all times during the lengthy hearing, the tenant appeared capable of participating in the hearing; he presented as being in good health and able to represent himself by submitting clear testimony and calling witnesses.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the parties' submissions and arguments are reproduced here. The lengthy hearing included divergent perspectives, each party calling two witnesses, and both submitting many documents including photographs. The landlord submitted witness statements and called two witnesses to provide testimony. The tenant called two witnesses. Only selected, relevant and important aspects of the claims, the facts and my findings are set out below.

The parties agreed as follows. The tenancy began on February 1, 2019. Monthly rent is presently \$654.00. At the beginning of the tenancy, the tenant provided a security deposit of \$485.50. A copy of the tenancy agreement was submitted. The building is a complex containing about 40 units.

Section 26 of the Agreement states:

The Tenant agrees, that if any occupant or guest causes unreasonable and/or excessive noise or disturbances the Landlord may end the tenancy. This includes activity that has or is likely to affect the quiet enjoyment, security, safety or physical well being of another tenant, occupant of the Landlord.

The landlord submitted extensive testimony and documentary evidence not all of which is referenced here. The key aspects of the landlord's evidence are as follows:

1. Throughout the tenancy, the landlord has received over ten written complaints and a greater number of verbal complaints. Many tenants are afraid to complain in writing or to testify.
2. On June 2 and 3, 2020 landlord was contacted by the witnesses LM, KM, as well as other tenants who wished to remain anonymous, making complaints about the tenant; the landlord testified that all complainants are single women with children.
3. Two of these complainants, LM and KM, submitted written statements and were called as witnesses.
4. The summary of the complaints is that the tenant was swearing and yelling at the complainants' children and at the women themselves; he was unpredictable and physically violent. He drank constantly and flicked burning cigarettes into the adjacent unit. He discharged a firearm. The complainants had called the police many times to the complex.
5. Many complaints involve children or inappropriate/disruptive behaviour towards

single women often in front of their children. Verbal abuse included calling them names, such as “fat a*s”, “wh*re” and “crack head”.

6. The landlord met with the tenant many times and cautioned him to no avail. The complaints continued.
7. On July 7, 2020, the landlord issued a written warning to the tenant about the complaints which was received.
8. A copy of the warning was submitted which warned the tenant that eviction proceedings may follow if the complaints did not stop.
9. The letter stated the tenant was in violation of the tenancy agreement in two key aspects:
 - a. The tenant was “discharging lit/live burning cigarette butts into the patio of another unit”;
 - b. The tenant’s conduct had resulted in “several written complaints from neighbours along with police reports and other documented evidence regarding the disturbance and/or harassing and intimidating behaviour which is a loss to their quiet enjoyment, security, safety and physical well being”.
10. The warning letter of July 7, 2020 stated that “any further incidences and/or complaints” would result in the issuance of a One Month Notice.
11. After the letter of warning, the tenant’s behaviour worsened. The abusive behaviour intensified, particularly towards the witness KM, resulting in the police attending four times. The tenant continued to send burning cigarettes into the backyard of the adjacent unit.
12. The landlord testified that they have substantial evidence including videos of the tenant and his guest CP (and witness) being abusive, swearing and intimidating other residents. which contributed to the decision to issue the One Month Notice.
13. As a result, the landlord issued the One Month Notice January 21, 2021. The landlord stated in the Notice that the tenant’s behaviour is a material breach of his tenancy with a disturbing and upsetting effect on the right to quiet enjoyment of the occupants of the other units in the building.
14. The Notice states in part:

The tenant has breached a material term of their tenancy agreement S26. Conduct by repeatedly affecting the quiet enjoyment, security, safety or physical well being of another tenant, occupant, or the Landlord after being warned in writing that any more incidence of this behaviour would result in our issuing a One Month Notice to End Tenancy. The Landlord has received several written complains from tenants regarding this harassing, disturbing behaviour towards them as well as fearing for their

safety and well being.

15. The tenant confirmed receipt of the landlord's Notice on January 21, 2021.

The witness LM was called by the landlord; she submitted a signed written statement dated February 24, 2021 which she confirmed in testimony. LM stated that she lives in the adjacent unit to the tenant. She testified that she has a young son in elementary school who is now terrified of the tenant and refuses to walk by the tenant's unit. LM stated that the tenant has been harassing her son for over a year, calling him names such as "a**hole and d*ck", and yelling "scaredy cat" at him. Both she and her son are frightened of the tenant and anxious about him.

LM testified that she has never seen the tenant when he has not been drinking. She stated she is afraid of the tenant as well. LM called the police four times to report the tenant for his behaviour which included physical violence to a visitor to the complex; she provided the police report numbers. Her signed written statement dated February 21, 2021, confirmed during her testimony, stated in part that she has complained to the police about "a physical assault" on her son. The statement includes the following:

He [my son] is afraid to walk to school. He is afraid to go that area of the complex because he doesn't know what this tenant will do next. I do not want to have to worry about being bullied or threatened by an adult with a big mouth who seems to take pleasure in intimidating everyone else in the complex.

The landlord submitted a copy of a previous Decision dated January 12, 2021, reference to the file number appearing on the first page, in which LM was the applicant. At that time, LM was granted a reduction in rent from the landlord as compensation for loss of quiet enjoyment and unreasonable disturbance stemming from the tenant's behaviour and the landlord's failure to correct the situation at the time.

The witness LM confirmed that the events described in the previous Decision truthfully set out the circumstances regarding her observations of and complaints about the tenant towards her son, herself, and other residents of the building.

The second witness KM was called by the landlord to testify. KM confirmed the truth of her submitted email of November 20, 2020 describing the situation involving the tenant and listing her complaints.

KM testified that the tenant has a history of abusive and insulting behaviour toward

single mothers in the building. KM has observed him drinking, fighting others, and being mean to children. The tenant has discharged a rifle in the backyard. (The tenant acknowledged discharging an air rifle which he testified he no longer has).

KM testified that the tenant struck a male visitor to the complex on the head with a bat which was seized by the police and was “covered in blood”. She is actively pursuing an application for a Protection Order against the tenant and is in regular contact with the RCMP.

The tenant acknowledged that he did not like LM’s son or KM’s visitor. He testified that LM’s son was bullying towards LM’s son and deserved retaliation. Similarly, KM’s visitor assaulted the tenant on numerous occasions which resulted in the tenant hitting him with a bat in fair retaliation, the police being called, and the bat seized as evidence. The tenant stated he had done nothing wrong, was simply defending himself, and was being unfairly victimized by neighbours and the landlord. Anything that he may have done was of little significance or in reasonable retribution for what the occupants and guests of the other unit had done to him.

Throughout the lengthy hearing, the tenant repeated that his behaviour was “back and forth” with LM’s son, KM and the male visitor. He denied he acted any “worse than anyone else” or that he should be evicted for his behaviour.

The tenant’s girlfriend CP was called by the tenant as a witness to testify as to the tenant’s good character. She stated that the tenant is kind and helpful to other children; for example, he fixes their bikes. CP claimed that the tenant is being unfairly attacked by others and is just defending himself. She denied the existence of the landlord’s video showing her being verbally abusive to other occupants.

The tenant’s friend JP was called as a second witness. He stated he frequently visits the building as a guest of another occupant. He said the tenant is “not an agitator, only retaliates”. JP testified the tenant has fixed neighbours’ cars. He said that when the tenant struck another man with a bat (which JP acknowledged he did not witness), the tenant was only doing what anyone else would do who was provoked in a similar situation. JP acknowledged he did not personally witness any of the altercations reported by the landlord’s witnesses.

The tenant asserted that there was no reason to evict him and he wanted to remain in the unit. He asked that the landlord’s Notice be vacated.

The landlord requested an Order of Possession effective on two days notice.

Analysis

The Act and Guideline

Section 47(1) of the Act allows a landlord to end a tenancy for cause for any of the reasons cited in the section. A party may end a tenancy for the breach of a material term of the tenancy.

Section 47(h) of the Act states 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:

[...]

(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;

As noted in *RTB Policy Guideline #8 – Unconscionable and Material Terms*, 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.

The Guideline provides that to determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term.

The Guideline further states that the question of whether a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. The same term may be material in one agreement and not material in another. Applications are decided on a case-by-case basis. Simply because the parties have stated in the agreement that one or more terms are material, is not decisive. The Arbitrator will look at the true intention of the parties in determining whether the clause is material.

The party claiming a breach of a material term must establish that the breach makes it

impossible for the tenancy to continue.

RTB Policy Guideline #8 – Unconscionable and Material Terms reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...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...*

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice.

Credibility

In reaching my Decision, I have considered the documentary evidence and the testimony of each of the participants. Given the contradictory testimony and positions of the parties, I must turn to a determination of credibility.

In assessing the weight of the testimony and evidence, I find the landlord's submissions to be persuasive, professional, and forthright. Their testimony, which was supported by well-organized and complete documentary evidence, credibly claimed that the tenant has behaved in such a manner that there is a breach of a material term, the landlord took all reasonable efforts to no avail to notify the tenant of the problem and to give the tenant an opportunity to correct the situation, and the tenant failed to do so.

I accept the landlord's testimony supported by the witnesses LM and MK that many occupants of the building are afraid of the tenant and would only make verbal complaints about him. I find the witnesses' evidence to be credible and find that the tenant behaved as they described. Each witness stated they were afraid of the tenant but could not live with his behaviour any longer as there were afraid of what he would do next. I accept they, and their children, were genuinely and severely disturbed by the tenant's behaviour.

I find the landlord presented credible evidence that the tenant repeatedly verbally abused occupants and their children, physically assaulted guests to the complex and others, sent burning cigarettes into an adjacent backyard, discharged an air rifle alarming occupants, and generated many disturbances resulting in the police coming to the unit several times. I find the cumulative effect of these ongoing disturbances to result in a breach of a material term.

I found the tenant to be less persuasive about the key facts of the situation. I considered his claims that he was the victim and not the instigator to be largely unsupported by the facts as I understood them. I found the tenant lacked reasonable comprehension of the effect on the other occupants building of his actions which were clearly described in the landlord's evidence and accepted by me. For example, I accept the landlord's and witnesses testimony that the occupants called the police with justification several times to get help and protection from the tenant's abuse, aggression, belligerence and violence; in his testimony, the tenant minimized these actions and appeared indifferent about the effect on the other occupants. I have considered that the tenant denied behaving any worse than anyone else that complained about him and that whatever he did was fair retaliation. I find the tenant's blanket denial of wrongdoing and justification of his actions to be unbelievable.

In addition to not accepting the tenant's account of events as believable, I find the account of the witnesses he called to be undependable. I find their evidence to be unreliable, lacking credibility, or based on second-hand accounts.

In short, I prefer the version of events to which the landlord testified. Accordingly, where the evidence differs between the parties, I prefer and accept the landlord's evidence.

Findings and Conclusions

As stated, I accept the landlord's evidence and the written statements of the landlord's witnesses as confirmed by them in testimony; I place considerable weight on this evidence.

I find that it was a material term of the tenancy that the occupants of the complex in which the unit was located were entitled to reasonable *quiet enjoyment, security, safety or physical well being*, as stated in the tenancy agreement. I find that the landlord has met the burden of proof on a balance of probabilities by establishing facts and circumstances of this case that the tenant breached this material term by the cumulative, ongoing devastating effect of his behavior on other occupants. I find the

tenant knew about these provisions in the agreement and understood his obligations.

I find that the landlord provided the tenant with a written warning that he was in breach of a material term and provided a reasonable time frame to comply. I find he knew the landlord considered the complaints serious and unless these were remedied, he would be evicted. The tenant acknowledged being aware of the complaints against him.

I find that the tenant disregarded the landlord's warnings and did nothing to alleviate the problem. I find the tenant considered himself blameless; he was defiant and indifferent to the landlord's and occupants' concerns. I find his behaviour is ongoing and has not improved. I accept the landlord's testimony that the behaviour has worsened, and the situation has become intolerable to other occupants who regularly seek police assistance.

I find that the landlord has met the burden of proof on a balance of probabilities that the tenant has breached a material term of the tenancy agreement by his cumulative actions.

I find the serious disturbances amounting to breach of a material term to include swearing at the witnesses and other single mothers, calling the witnesses and other occupants insulting names, name-calling children, discharging an air rifle in his back yard, tossing burning cigarettes into a neighbour's yard, and assaulting others.

As I have found there is a breach of a material term, I therefore dismiss the tenant's application to cancel the One Month Notice without leave to reapply.

Order of Possession

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'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.*

As the tenant's application is dismissed and I have found the Notice complied with section 52, I grant the landlord an Order of Possession effective two days after service on the tenant.

Conclusion

I grant the landlord an Order of Possession effective two days after service on the tenant. The landlord must serve a copy of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be 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: May 2, 2021

Residential Tenancy Branch