



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed 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. All parties acknowledged the evidence submitted and 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.

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?

Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation, or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The landlords gave the following testimony. The tenancy began three to four years ago. The rent of \$360.00 is due on the first of each month. The tenant rents a room in a rooming house and shares a common kitchen with the others. The landlord issued a One Month Notice to End Tenancy for Cause on February 28, 2021 for the following reasons:

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:*

(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

KK gave testimony that on January 7, 2021 he was socializing in the kitchen with two other tenants. KK testified that the tenant came into the kitchen and told them all to leave the kitchen as she wanted to wash the dishes and needed all the space. KK testified that he told her that he pays rent like everyone else and isn't interfering with her using the kitchen so he shouldn't have to leave. KK testified that the tenant grabbed a meat cleaver and banged it on the counter. KK testified that the tenant yelled " I will kill all of you if you don't go back to your room".

KK testified that all the tenants locked themselves in their room and the tenant continued to yell, scream, and threatened that she would kill them. KK testified that he called the police and they later attended. KK testified that the tenant has been criminally

charged and a condition of her bail is to not be near him and that she can only use a knife for preparing food. KK testified that he is frightened of the tenant. KK testified that she keeps telling him “I will kill you, I will kill you, I will not go to jail, I have a mental problem”. KK testified that JL was not present and that he gave a false statement to the police.

PS testified that he is concerned for the safety of all tenants. PS testified that a second similar incident happened on February 15, 2021 when the tenant threatened to kill another tenant with a knife. PS testified that the tenant is too scared to participate in today’s conference to provide first hand information about the incident. DS testified that this is an ongoing issue with this tenant and that the environment for the other tenants in the house is an unsafe one. DS requests an order of possession and for this tenancy to end.

JL gave the following testimony and submissions on behalf of the tenant. JL testified that he used to live in this home but moved out at the end of December 2020. JL testified that he was hired by the tenant to be her unlicensed care giver and is acting as her advocate and as a witness to the events for this hearing. JL testified that the tenant only wanted to wash the dishes and have sufficient space to do so that she wouldn’t get the other tenants wet from splashing water. JL testified that KK refused to move out of the way when the tenant asked him to move and he said, “grab a knife and stab me”. JL testified that only after this “incitement statement” did the tenant grab a knife and slam it on the counter. JL testified that the tenant did not utter any threats or make any comments. JL testified that the tenant will be fighting the criminal charges and wants to remain in the home.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlord and in particular, the landlords witness KK to be a more credible witness than either the tenant or her advocate. The landlord and KK provided consistent, logical testimony which was supported with documentary evidence where available. The landlord admitted when she could not recall specific facts and,

where appropriate, referred to her notes and documents prepared prior to this hearing to assist her recollection.

JL was argumentative, focused on irrelevant matters and conducted himself in an agitated and irrational manner. I found that much of JL's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party rather than submit the tenant's position. Based on the foregoing, where the evidence of the parties clashed, I found that the landlord's version to be more credible and consistent with how a reasonable person would behave. Based on the clear, concise and credible testimony of KK I find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, accordingly; I find that the landlord has provided sufficient evidence to end this tenancy.

Section 55 of the *Act* reads in part 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.

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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: May 28, 2021

Residential Tenancy Branch