



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PDSCL HOUSING SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AAT

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 April 7, 2021 ("1 Month Notice"), pursuant to section 47; and
- an order allowing access to the rental unit for the tenant or the tenant's guests, pursuant to section 70.

The landlord's two agents, landlord LW ("landlord") and "landlord BS," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness MS," who was excluded from the outset of the hearing, testified at this hearing on behalf of the landlord. Both parties had an equal opportunity to question the witness. This hearing lasted approximately 73 minutes.

This hearing began at 1:30 p.m. and ended at 2:43 p.m. The landlord left the teleconference and called back in immediately at 1:34 p.m., due to technical issues with the landlord's telephone. I did not discuss any evidence with the tenant in the absence of the landlord.

The landlord confirmed that she was the housing coordinator for the landlord company named in this application and that she had permission to speak on its behalf. The landlord stated that the landlord company owns the rental unit. Landlord BS did not testify at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they wanted to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. 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 stated that she could not see the landlord's surveillance videos, provided to her on a USB drive, because she did not have a computer. She said that she did not notify the landlord that she did not have a computer to see this evidence. As the landlord did not review these videos during the hearing, I did not consider these videos at the hearing or in my decision.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on April 7, 2021. The landlord confirmed the above service method and date. Both parties agreed that the notice indicates an effective move-out date of May 7, 2021. The landlord claimed that the effective date should have been May 31, 2021. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on April 7, 2021.

At the outset of the hearing, the tenant confirmed that she did not require access to the rental unit for her or her guests. She said that she was not pursuing this portion of her application. I notified the tenant that this portion of her application was dismissed without leave to reapply.

Issues to be Decided

Should the landlord's 1 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 both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2017. Monthly rent in the amount of \$364.50 is payable on the first day of each month. A security deposit of \$150.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is an apartment in a multi-unit residential building.

Both parties agreed that the landlord issued the 1 Month Notice to the tenant for the following reasons:

- *Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;*
- *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.*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
 - *damage the landlord's property;*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
 - *jeopardize a lawful right or interest of another occupant or the landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord testified regarding the following facts. She started working for the landlord in March 2021. The issues with the tenant started in September 2020, where there is a Court order banning "AI" from the rental unit and any contact with the tenant, due to assault. There is no end date on the restraining order. It is in the best interest of the tenant to avoid AI, as per the restraining order. The landlord has surveillance cameras, where they have produced videos and photographs, submitted to the tenant, showing AI breaching the first security door and the tenant letting him in the second door or AI breaking the second door. AI leaves the entrance doors unsecured and open for anyone to access the rental building and use the elevators. This is a material breach of the tenant's tenancy agreement. AI goes to visit the tenant at the rental unit. There is violence, screaming, yelling, and furniture crashing in approximately half a dozen complaints made by other occupants in the rental building and the landlord's staff. The

landlord has personally seen the tenant let AI into the rental building on the side stairs, as shown on the landlord's surveillance cameras. In January 2021, the landlord issued a notice to end tenancy to the tenant and reached an agreement with her. The landlord personally confronted AI when she saw him in the rental building approximately one week prior to this hearing date. She can see the entrance from her office, and she knows what AI looks like. She asked AI to leave and he said he was going to see the tenant in her rental unit, so the landlord called the police. The landlord and other occupants in the rental building have called the police numerous times regarding AI accessing the rental building and going to see the tenant in her rental unit.

The tenant testified regarding the following facts. The tenant agreed that AI has come to see her at the rental building, but she does not let him into the building. She calls the police when AI comes to see her. She cannot physically stop AI from coming to the rental building. The tenant does not know what to do. She let AI into the rental building and her rental unit about 1 to 1.5 months prior to this hearing date, because he has bone cancer and is undergoing chemotherapy, so she felt bad for him. AI is in jail now, for 16 criminal counts, so he will not be coming to the rental unit for awhile. The police asked for the restraining order against AI for him to stay away from the tenant. The tenant and AI are trying to get the restraining order removed, as he has not assaulted the tenant. The tenant has arguments with AI in the rental unit, just like everyone else, and when AI raises his voice, she asks him to leave. There is no furniture being thrown around by the tenant or AI in the rental unit. Other people let AI into the rental building, not just the tenant, since he knows other people too.

Witness MS testified regarding the following facts. He is 64 years old and has lived in the rental building for six years. He lives on the same floor as the tenant, down the hall and across from the tenant's rental unit. From inside his rental unit, witness MS has heard fighting, slamming of doors, and the tenant screaming for people to call 911 about two to three times from her rental unit. Other neighbours have told witness MS they heard the same thing as him. He has called the police because he can hear stuff banging around and he is worried that the tenant is a "small lady." On the Friday prior to this hearing date, he talked to the tenant, who said she got two-inch-thick paperwork of witness MS calling the police on the tenant all the time, which is not true since other people called the police too. These issues with the tenant have been ongoing since January 2021. Witness MS does not want to call the police but when he hears the tenant screaming, he has to do something. He does not feel safe knowing AI is in the rental building. He knows what AI looks like, has seen AI in the rental building and going in and out of the tenant's rental unit, and he knows AI is not supposed to be in the rental building. He has seen the tenant let AI into the rental unit, but not the rental

building. He has heard the tenant scream that AI is taking her phone, wallet and keys. He has seen AI hold the tenant's keys and the door to her rental unit. He has heard the tenant tell the police that AI has stolen her keys, money and phone. A few weeks prior to this hearing date, witness MS saw AI leaving the tenant's rental unit with two big black garbage bags, and although he could not see inside the bags, he thinks there were beer cans in them. AI waited for witness MS to get onto the elevator and leave. The tenant can call 911 from downstairs in the rental building. The tenant has not been mean to witness MS or said anything to him. Lots of people care about the tenant and do not want her to get hurt, so that is why they call the police on her behalf.

Analysis

I found the tenant's evidence to be less credible, as compared to the landlord. On the one hand, the tenant agreed with letting AI into the rental building and her rental unit and on the other hand, she denied these same facts. During the hearing, the tenant's version of events changed frequently, she became upset and agitated with questions, and her testimony was not given in a calm, candid or straightforward manner. The tenant was more focussed on arguing with and interrupting witness MS, than asking him questions relating to this application. This hearing lasted 73 minutes and the tenant spoke for the majority of the hearing time, as compared to the landlord.

Conversely, I found the landlord's and witness MS's testimony to be more credible, as they did not argue with the tenant or interrupt her and they provided their evidence in a calm, candid and forthright manner. The landlord provided evidence to support its application and the landlord referred to this evidence during the hearing.

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on April 7, 2021 and filed her application to dispute it on April 12, 2021. Therefore, the tenant is within the time limit under the *Act*. The burden shifts to the landlord to prove the reasons on the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice to the tenant for a valid reason. I find that the tenant significantly interfered with and unreasonably disturbed other occupants and the landlord at the rental building. As I have found one of the reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

I accept the testimony of the landlord that the tenant and AI caused unreasonable noise and disturbance at the rental building. I find that the tenant's pattern of behaviour of yelling and fighting with AI and causing the landlord and other occupants to call the police repeatedly, when the tenant is aware of the restraining order for AI not to come to the rental unit or be in contact with her, has caused significant interference and unreasonable disturbance to other occupants and the landlord at the rental building. These other occupants do not feel safe around the tenant and AI, they complain to the landlord, and the police have been called numerous times.

I accept the testimony of witness MS that he is one of the occupants living on the same floor as the tenant and he feels unsafe in the rental building, due to the tenant and AI's repeated fighting and domestic disturbances. I accept that he has called the police a number of times, he has heard the tenant and AI yelling from inside his rental unit, and he has heard the tenant screaming for help and to call the police.

I accept the landlord's testimony that the parties settled a previous notice to end tenancy in January 2021 but the issues with the tenant have not resolved. The tenant did not dispute this information. Since the 1 Month Notice has been served to the tenant on April 7, 2021, there have been more complaints from the landlord and other occupants in the rental building, and photographs of the tenant allowing access by AI to the rental building in late April and June 2021.

The landlord provided copies of photographs from the surveillance cameras at the rental building, which the tenant said she received and did not dispute. These photographs show AI entering the rental building and the tenant opening the doors to let him into the building. The tenant agreed in her testimony that she let AI into the rental building, as recently as 1 to 1.5 months ago because she felt sorry for him since he has bone cancer and is undergoing chemotherapy. She testified that while AI is in jail right now, he and the tenant were trying to get the restraining order removed. I accept the landlord's testimony that she saw AI in the rental building, stating that he was going to see the tenant, as recently as one week prior to this hearing on June 21, 2021. Witness MS testified that he saw AI leaving the tenant's rental unit as recently as a few weeks prior to this hearing on June 21, 2021.

The landlord provided a copy of an undertaking from September 6, 2020, stating that AI is not permitted to communicate with the tenant or go to the rental unit at the rental building. The landlord provided a copy of a release order, dated October 25, 2020, that AI was charged with one count of assault on September 6, 2020, and one count of breach of an undertaking on October 23, 2020. The landlord provided conditions

attached to the release order, stating that AI must report to a bail supervisor, have no contact or communication with the tenant, must not be within 50 metres of the tenant, must not be within 50 metres of the tenant's rental unit in the rental building, and must not possess any weapon or knife outside of cooking in his home. The landlord provided a copy of a letter, dated October 29, 2020, from a probation officer, addressed to the tenant at the rental unit. This letter confirms that AI is not to have any contact with the tenant for her safety and includes the terms of the undertaking and that AI signed the letter acknowledging receipt of a letter copy from a police officer. The tenant did not dispute any of these documents, that she received from 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.

Accordingly, I dismiss the tenant's application to cancel the landlord's 1 Month Notice, without leave to reapply. I find that the landlord's 1 Month Notice, dated April 7, 2021, complies with section 52 of the *Act*. As the corrected effective date of the notice of May 31, 2021 has passed, I issue an order of possession to the landlord effective two (2) days after service on the tenant.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone 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: June 21, 2021

Residential Tenancy Branch