



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMEFIELD PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC 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; and
- authorization to recover the filing fee for this application, pursuant to section 72.

KF ("landlord") represented the landlord in this hearing, while OS appeared as agent for the tenant. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord's agent confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed. Both parties confirmed that although the legal name of the tenant is GS, the tenant often goes by JS, as referred to in the evidentiary materials, and in this hearing.

OS confirmed service of the 1 Month Notice dated March 22, 2021, which was personally served on the tenant on the same date. Accordingly, I find that the 1 Month Notice duly served on the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on April 1, 2018, after the tenant took over this tenancy from his mother, who had passed away on March 2, 2018. The tenancy was approved by the current agent, TF. The tenant originally moved into the rental unit with his mother in August of 2017 to provide care for his ill mother. Monthly rent is currently set at \$701.00, payable on the first of the month. A security deposit was collected from the tenant's mother in the amount of \$350.00, which the tenant's agent testified was still in the landlord's possession.

The landlord issued a 1 Month Notice to End Tenancy on March 22, 2021, providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. The tenant or a person permitted on the property by the tenants has put the landlord's property at significant risk.

The landlord's agent provided the following reasons for why the landlord feels that it is necessary to end this tenancy on the grounds provided on the 1 Month Notice. The landlord's agent testified in this hearing that there have been ongoing issues with the tenant for years, but the landlord felt that there was no choice but to end the tenancy after an incident that took place on March 21, 2021.

On March 21, 2021, the tenant entered another tenant's rental unit without her knowledge or permission. The tenant testified in the hearing that she was home with her

10 year old son, and both were extremely frightened by the incident. The tenant did not call the police, but contacted a neighbour as she was shaken up. The tenant also contacted the landlord. The landlord served the tenant with the 1 Month Notice the next day.

The landlord testified that that despite the history of issues with the tenant's behaviour, the tenant's behaviour has not improved. The landlord felt that "things have gotten much worse". The landlord entered into evidence an email that was sent to the tenant's agent on May 29, 2019 about the tenant being bad shape. OS responded on May 30, 2019 that the tenant is supposed to go into rehab on June 16, 2019.

The landlord also submitted correspondence from other tenants, as well as documentation about an incident that took place in December involving the tenant's guest and a letter carrier. The landlord testified that the incident jeopardized the building's mail service as the post office threatened to suspend service to the building after the incident. The landlord submitted a copy of the message that was sent to the tenant following this incident.

The landlord feels that the tenant's behaviour has deteriorated, and is an ongoing threat to other tenants and those in the building. The landlord testified that after incident on March 21, 2021, the landlord felt that there was no other choice but to end the tenancy.

The tenant's agent testified that many of the issues described were not supported in evidence, and that these are merely allegations against the tenant. The tenant's agent felt that the landlord had ulterior motives, such as wanting to raise the rent. The tenant's agent testified that the tenant has battled alcoholism, which is a lifelong disease. The tenant also suffers from other issues such as glaucoma, and other health issues that has necessitated treatment and pain medication. The agent testified that the tenant was not truly threatened on March 21, 2021, and that the tenant did not anticipate being disoriented by the one drink and the pain medication he took after his dental procedure on March 9, 2021. The tenant submitted a letter from his dentist confirming that the tenant had dental surgery with sedation on March 9, 2021.

The landlord's agent testified that this was an isolated incident, and that the tenant has gone to rehabilitation. The landlord testified that the tenant is dealing with other issues such as a work injury, and that the tenant has managed his issues and battle with alcohol.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

I have reviewed the documentary evidence as well as the sworn testimony provided for this application. I find it undisputed that an incident took place on March 21, 2021, when the tenant had entered another tenant's rental unit without her knowledge or permission. The tenant testified that both her son and her were quite disturbed by the incident, and after reporting the incident to the landlord, the landlord served the tenant with the 1 Month Notice.

It is also undisputed that that the landlord had been in correspondence with OS since 2019, when the landlord had written to OS about how the tenant was in bad shape. OS testified that the tenant has gone to treatment, and the incident that took place on March 21, 2021 was an isolated one after the tenant had mixed one drink with pain medication following a dental procedure 12 days prior. OS testified that the tenant was unaware of the side effects of doing so, and became disoriented after taking the medication, causing the tenant to accidentally enter the wrong rental unit.

Although I am sympathetic towards the fact that the tenant has battled, and is still battling, many issues that affect his day-to-day life, and although I believe that the actions of the tenant on March 21, 2021 were unintentional, the tenant is still responsible for his behaviour, especially when it affects and violates the safety, lawful right, and well-being of other tenants. I find it negligent of the tenant to not take proper precautions or ownership of their actions before mixing his medication with alcohol. Although I acknowledge that the tenant has never experienced this side effect before, I do not find that this explanation justifies the tenant's actions. The tenant resides in a building with many other tenants and occupants. The landlord has an obligation to balance the right of a tenant to reside in the building regardless of their background, with the right of another tenant's right to peaceful and quiet enjoyment of their home. In this case, I find that the landlord has shown compassion and patience in trying to work with this tenant despite the tenant's history, as demonstrated by the landlord's willingness to transfer the tenancy over in 2018, to the fact that the landlord had waited until the March 21, 2021 incident to issue a 1 Month Notice despite the landlord's concerns over the years about the behaviour of the tenant and tenant's guests.

Although there is reference by the tenant to ulterior motives of the landlord in ending this tenancy, I do not find these allegations to be supported in evidence. As noted above, the onus is on the landlord to support that they have grounds to end the tenancy for the reasons provided on the 1 Month Notice. In this case, I find that the landlord has met this onus. I note that some of the letters and materials submitted in evidence make reference to possible behaviour by the tenant, including damage to the carport. As these incidents have not been proven, I exercised my discretion to not consider these incidents or reference to possible threats for the purposes of this decision. My findings are based on the undisputed facts before me. I find that the evidence shows that the landlord has been aware of some of the issues that the tenant has faced, as shown in the correspondence from 2019 to the tenant's agent. Although OS's concerns was that the landlord wanted to end the tenancy to raise the rent, I find that the landlord has not made any previous attempts to raise the rent, nor has the landlord made any efforts to end this tenancy in the past despite the fact that there have been previous complaints, such as the incident involving the mail carrier.

In fact, I find that the landlord had raised previous concerns with the tenant, as shown by the communication submitted by the landlord, and the landlord has shown patience in allowing the tenant to correct these issues rather than end this tenancy.

On March 21, 2021, the tenant entered another tenant's suite, without the tenant's permission, or any prior warning. Although the tenant's agent noted that it was the responsibility of the tenant to lock their door, and the responsibility of the landlord's agent to ensure that tenants were aware of the dangers of not doing so, the actions of others to ensure their personal safety does not relieve the tenant's obligation to take proper care and attention to not infringe on the rights of others. I find the breach of another tenant's privacy and sense of personal safety by entering their rental unit to be a serious violation, regardless of whether the action was intention, or not. I find in this case, the tenant has demonstrated a level of negligence that cannot be justified by ignorance of the side effects of medication. In review of the evidence and testimony before me, I am not satisfied that the tenant or their agent has taken ownership of the significance and seriousness of this breach, and this leads me to lack confidence in the tenant's ability to abstain from similar, or more serious incidents in the future.

I find that that the landlord had provided sufficient evidence for me to conclude that the tenant has significantly interfered with and unreasonably disturbed another tenant. I find that the landlord had worked with the tenant for many years in order to continue this tenancy, but the tenant's behaviour has escalated to the extent that the tenant's behaviour now threatens the safety and lawful rights of others. Accordingly I dismiss the tenant's application to cancel the 1 Month Notice dated March 22, 2021.

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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, April 30, 2021. As that date has passed, I find that the landlord is entitled to a 2 day Order of Possession. 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 within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful with their application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of April 30, 2021.

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: July 16, 2021

Residential Tenancy Branch