



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 533985 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Advocate, who was also accompanied by a student, who observed only and did not participate in the hearing. An agent for the landlord also attended, who is hereafter referred to as “the landlord.” The parties each gave affirmed testimony and the landlord called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

At the commencement of the hearing I questioned the parties about exchanging evidence; some evidence of the tenant was provided the day of the hearing, and was not provided to the landlord. That evidence is not considered in this Decision however all other evidence has been reviewed and is considered in this Decision.

At the end of the hearing I permitted the parties to provide written closing submissions by July 23, 2021. The tenant’s Advocate and the landlord have provided written submissions, which I have read and considered.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed-term tenancy began on July 1, 2020 and reverted to a month-to-month tenancy after the first year, and the tenant still resides in the rental unit. Rent in the amount of \$850.00 is due on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 2nd floor apartment in a complex containing 39 units.

On April 28, 2021 the landlord put up a notice in 5 places through the rental complex, to ensure it got the attention of all tenants, respecting an RV which had been parked outside of the complex from April 23 to April 28, 2021. Numerous tenants advised the landlord that a dog had been inside and was barking. The landlord does not know if anyone was living in the RV but it was blocking 3 of the 4 parking spots, not in an apartment parking lot, but on the public street with other businesses in the vicinity. The city is trying to deal with RVs being parked in public and the landlord didn't want anyone living on the street in front of the rental complex.

The landlord received a cell phone message from the tenant stating that it was an emergency, that police had already been called about another occupant, and using some quite aggressive wording. An audio copy of the message has been provided as evidence for this hearing. The landlord then called the other occupant, who was not available, but spoke to his spouse stating that he had received a message from the tenant. The landlord then called the tenant who said that the other occupant was putting up notices in the building. The landlord responded that it was unneighbourly to use all those parking spots and advised that he had put up the notice. The landlord did not believe it was an emergency, and advised the tenant to call the next day and ended the call.

On April 29, 2021 the other occupant of the rental complex told the landlord that he was in a common area reading a notice. The tenant approached the other occupant and shouted obscenities at him and said, "This is all your fault." The tenant sucker-punched the other occupant in the head and kicked him twice in the leg. The incident happened on April 28, 2021 at about 1:30 p.m.

On May 4, 2021, based on the conversation and cell phone message, and due to the aggressive and violent behavior, and due to the language used and what the other

occupant had told the landlord, the landlord gave the tenant a One Month Notice to End Tenancy for Cause, by placing it in the tenant's mailbox. A copy has been provided for this hearing and it is dated May 4, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states:

- 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.

The landlord also testified that the tenant's evidence contains a lot of inconsistencies, for example that the tenant's statement states that she called the manager immediately before reporting it, but the tenant's voice mail states that she had already called police. The tenant's statement also says that the tenant and landlord didn't discuss the issue, but the landlord could not have done so because he didn't know anything about an alleged assault from the tenant's voice mail. The other occupant has not been contacted by police.

The other occupant, among other occupants, volunteers in the building in the evenings and professionally communicate with each other.

The landlord's witness testified that during the week of April 23, 2021 a large RV was parked close to the building, on the street, taking up 4 or 5 spaces and appeared to be deserted and had no curtains. There was a dog inside and the witness called the SPCA thinking that the dog had also been abandoned.

On April 27, 2021 the witness put a flashlight up to a window of the RV to see inside and a lady who owns it came out and stuck her cell phone into his face aggressively taking video of the witness. The witness explained that he thought the RV and dog were deserted. He also told the lady to remove the cell phone from his face or he would slap it. The lady complied and the witness walked away and went into his apartment.

On April 28, 2021 the witness was at a bulletin board in a common area of the rental complex and a lady arrived and said, "It's all your fault," and struck the witness in the side of the head with a punch, leaving a mark on his head that he was bleeding from, kicked him a couple of times and left saying she'll get even. The tenant dropped her keys and bent over to pick them up. The witness didn't touch the tenant and didn't follow her, but went home to tell his wife what had happened.

The witness didn't know who the woman was, did not recognize her. The witness told her that she could get charged, but the witness changed his mind and didn't report the assault. The witness did not believe it was serious enough to seek medical attention.

The witness has been residing in the rental unit for about 6 years, and does some work in complex, such as walking around each night to ensure the complex is secure. Sometimes homeless people take advantage of open cars and such. The witness makes them leave, and they do. In exchange, the witness receives a rent reduction. The witness speaks to the landlord quite often, and the witness lets him know when the witness sees stuff, but they don't socialize.

The witness is about 5' 10" and 150 pounds, and is not fearful of the tenant.

The tenant testified that she resided in the apartment complex from 2005 to 2014 in a number of different apartments, with no issues, and received a referral from the previous property manager to reside there again.

The tenant is a graduate student with no income except for a small stipend to cover tuition. To move now will increase the rent by about \$400.00 or \$600.00 per month and would likely move her belongings into storage and sleep in her car.

The tenant and other occupants believed the landlord's witness was the assistant manager.

While the landlord was on vacation during the week of April 23, 2021 the RV arrived. There is a community bulletin board, and the tenant saw some notices posted on the doors stating that it was hard to see the exit due to the RV. Later that morning, the tenant had her guest move the RV. No vehicles were parked there at the time. Occasionally there can be 4 vehicles parked there but not usually very close. The tenant took down the 8 notices that she saw and gave them to her guest in the RV, prior to April 26, 2021 so the landlord would not have seen them.

On April 27, 2021 the guest called the tenant advising that a man had shone a flashlight in her window, but it was dark and she couldn't video it, but he told her about legalities about parking and said he had called the SPCA. The guest called police to report it. The tenant left a voice mail to the landlord's phone saying that police had been called.

Around 1:30 the tenant was waiting for the elevator and saw a notice about the RV and took it down. The tenant thought it had an interesting choice of words that someone felt that the guest believed it was her right to park there and had no intention of moving it. However,

that was false information and the notice didn't look official. The tenant wanted to show her guest what the note said and that all tenants were being rallied to call the City, citing by-laws and rules for the building.

The tenant and guest found a card with a file number on the RV from the SPCA, so they called the number to leave a message but no one called back until the next day and advised that the landlord's witness had called them.

On April 28, 2021 as the tenant was leaving the building, she saw the landlord's witness looking at the notice, and as she approached, she heard him say, "We'll get that dirty F ____ out of here." The tenant pulled the notice off the board and crumpled it up and said, "You're the one responsible." The landlord's witness replied quite clearly that he didn't want her kind there. He took a few steps back from the bulletin board, and the tenant threw the notice, accidentally dropping her keys, and bend down to pick them up as she felt pressure on her shoulder putting her off balance. The tenant felt it was a dangerous place to be and had defence training before and wanted to get away from him and protect her face. The tenant landed on the ground and off-balance. The tenant kicked at him and made contact as she stood up with her hands raised covering her face. Things are fuzzy, but the tenant felt suffocated like she couldn't get away. The landlord's witness was holding the tenant close, so she pushed him away and snaked out of his grasp but her arms were raised above her head. The tenant turned and headed out to the parking lot and the landlord's witness followed about a foot behind. The tenant kept looking back to see if he would grab her or intimidate her. Once the tenant got outside, she noticed that he was a few steps behind, so the tenant called the landlord. No one answered so she called the emergency number and had to leave a message. The tenant did not mention an assault. No one came out of their apartments, and the tenant was very upset and didn't know what to say in the message.

The tenant spoke with the landlord afterwards, trying to talk about what happened. He seemed surprised to learn that it was the tenant's guest who owned the RV and was interested in learning when it would be moved. He said it wasn't an emergency and he'd talk the next day and hung up.

The tenant did kick the landlord's witness, and possibly smacked him in the head after he assaulted the tenant by hitting her in the head while she was standing up from picking up her keys. The tenant couldn't get out of his grasp; his face was very close to the tenant's face. For the rest of that day and the next couple of days the tenant suffered significant headache and stiff neck. For the next few days sleeping and reading were problematic.

The tenant sought medical attention on May 12, 2021, and was advised that if the tenant didn't start dealing with the fear from that incident, the tenant would benefit from talking to someone from Mental Health. The tenant still feels threatened and scared and traumatized. The tenant only gets 6 visits, but it's been helpful to process what went on and to get the image out of her mind and move on.

The police officer took down what the tenant had told him and said he'd talk to the landlord's witness to get the full picture, but that a judge would have thought it consensual.

The police also told the tenant to call back and get a new occurrence number each time things happened. On May 7, 2021 another incident did happen and the tenant wanted police to have a record of it. The tenant was pulling into a parking spot and tried to re-aligning when the landlord's witness walked behind the vehicle. The tenant kept moving backward as far as she had intended to without hitting a post. The landlord's witness stopped and took a few steps toward the tenant. The tenant thought it was unreasonable way to behave and worried he did so purposely.

Also, on June 6 early in the morning the tenant had groceries to unload. Shopping carts are available for tenants, and as the tenant was pushing it outside, the landlord's witness was walking through the parking lot to go inside, but instead of going in, he stared at the tenant for 5 to 10 seconds. A van was parked next to the tenant's vehicle, and the landlord's witness was walking very slowly and staring for a very long time, making the tenant feel uncomfortable. The tenant did not report it to police.

SUBMISSIONS:

The landlord submits that the tenant did not mention anything about a physical altercation with the landlord's witness or call police until after she was served with the notice to end the tenancy.

The tenant's Advocate submits that the tenant was acting in self-defence, and that neither the landlord nor the landlord's witness fear for their safety or the safety of other residents. Similar cases have been provided, including a case showing that where there are 2 competing versions of events without additional evidence, the landlord's claim will fail:

"It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and their claim falls."

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have reviewed all of the evidentiary material and written submissions provided by the parties, including past cases. I agree that where there are 2 different versions of events, the balance of probabilities is a key factor in making a decision.

The landlord has indicated that there are inconsistencies with the tenant's evidence and testimony, and there is no evidence other than the tenant's testimony that the landlord's witness initiated the altercation. The tenant testified that she did kick the landlord's witness, and possibly smacked him in the head after she had been assaulted by him and by hitting her in the head while she was standing up from picking up her keys. None of that information was provided to the landlord in the urgent call the tenant made to him.

To end a tenancy for interference of disturbing another occupant or the landlord or jeopardizing the health or safety or lawful right of another occupant or the landlord, the interference or disturbance must be significant; or jeopardizing a lawful right of another occupant or the landlord must be a serious situation. In this case, although I am not entirely convinced that the tenant's version of events is accurate, the landlord's witness indicated in his affirmed testimony that he did not feel that medical assistance was necessary, nor did he contact police, and testified that he is not fearful of the tenant. Therefore, I am not satisfied that the landlord has established that the incident was entirely initiated by the tenant or significant enough to warrant ending the tenancy, and I cancel the notice to end the tenancy.

There is no evidence to support the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the tenant's application.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant in that amount. I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it as a judgment in the Provincial Court of British Columbia, Small Claims division.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 4, 2021 is hereby cancelled and the tenancy continues.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 29, 2021

Residential Tenancy Branch