



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coast Foundation Society and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes CNC

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.

The tenant and the landlord were represented at the hearing by agents, who both gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties have also provided evidentiary material, which they have exchanged. However, the tenant's Advocate submitted that according to the Residential Tenancy Rules of Procedure, the landlord is required to demonstrate that each applicant has been served with the landlord's evidentiary material. The tenant's Advocate has not been provided with any of the landlord's evidence.

In this case, the landlord is the respondent. The Rules of Procedure specify:

3.16 Respondent's proof of service

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

The Style of Cause shows that the tenant is the applicant, and the Advocate is an Advocate or Assistant. I find that the landlord has provided evidence to the tenant as required by the Rules of Procedure.

No further issues with respect to service or delivery of documents or evidence were raised and all evidence provided by the parties has been reviewed and is considered in this Decision.

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*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 1, 2019, and the tenant still resides in the rental unit. The rental unit is provided by way of a Program Agreement for individuals with disabilities or mental health issues. A copy of the Program Agreement has been provided by the tenant as evidence for this hearing.

Rent in the amount of \$375.00 is payable on the 1st day of each month, and arrears have accumulated. No security deposit or pet damage deposit were collected by the landlord. The rental unit is an apartment in a complex, and the landlord's agent does not reside on the property.

On July 14, 2021 the tenant was served with a One Month Notice to End Tenancy for Cause (the Notice), a copy of which has been provided for this hearing, by posting it to the door of the rental unit. It is dated July 14, 2021 and contains an effective date of vacancy of August 31, 2021. The reasons for issuing it state:

- 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 Details of Cause(s) section states that the tenant committed an assault on another tenant on July 8, 2021.

The landlord's agent further testified that on July 8, 2021 the tenant was seen with a towel with blood on it, and told a staff member on site that a co-tenant owed the tenant \$20.00 and they had an argument. Video footage was viewed which showed that the tenant punched the co-tenant, who lives in the same apartment. The tenant was seen repeatedly chasing the co-tenant and when the co-tenant fell to the ground, the tenant kept punching him even while he tried to get into his suite. Still photographs taken from the video have been provided for this hearing. As far as the landlord's agent is aware, only the 2 live in that apartment.

On July 9, 2021 the landlord's agents called police who viewed the footage and they tried to contact the tenant. The tenant wouldn't open the door and was playing music loudly so police were not able to talk to him.

On July 11, 2021 police were called again. The tenant was very argumentative and was asked to leave the site during the investigation, but the tenant was not cooperative.

On July 12, 2021 police were called again. The tenant was very verbally aggressive toward staff, and there wasn't much progress because the tenant wasn't cooperative.

The landlord's witness is a Program Manager, and responsibilities include serving notices, as well as interfacing with the landlord for repairs, supporting staff, intake of tenants, and serving documents.

The landlord's witness served the notice to end the tenancy, and testified that the tenant didn't respond to a knock on the door so the witness taped it to the door and a photograph was taken.

The following day the witness heard about the incident and viewed the footage, and in discussion, given how violent the incident was, the camera system is great, but screens are very small on the monitor, and staff members have other duties, so it may not have been captured at the time of the incident. The witness asked for police to attend; it was far beyond a consensual fist fight and considering that the other person was trying to get away while being chased down the hallway, it was a persistent attack by the tenant. The landlord has zero tolerance for violence. Police viewed the footage as well. Injuries on the other person started later in the day from being repeatedly hit in the face and head, and swelling was noticed, but he refused to go to the hospital. His team was contacted including a nurse to convince the person to go to hospital, but he said he was fine. He left the property and the witness is not sure where he went. He returned and

did not know why the tenant was hitting him or why he wouldn't stop, but chose to not press charges.

The witness also testified that both are tenants residing on the same floor of the complex, but do not live in the same apartment.

The tenant's Advocate and representative testified that going back a few hours prior to the incident, earlier in the day the tenant was with 2 other tenants in the TV room. The other person arrived and started acting up, blocking the TV and was asked to move. However he refused and verbally attacked the tenant with a homophobic slur. The altercation was not unprovoked and the tenant should not have been singled out, but disciplinary action should have been taken against both tenants. Subsequently the other person, who was described by the landlord's agent as a co-tenant threatened a staff member with a knife and was moved to a psychiatric facility.

The Advocate directed me to a letter from the tenant provided as evidence for this hearing. It is addressed to the Residential Tenancy Branch dated November 1, 2021 wherein the tenant explains that the other tenant stood in front of the TV and verbally attacked the tenant with profanity-laced insults and a homophobic slur. It also states that the tenant had hoped to obtain written confirmation from 2 tenants who witnessed the incident but 1 is in hospital with COVID-19 and the other was afraid of risking eviction for speaking out publicly. It also states that the incident was not unprovoked.

The Advocate further testified that the tenant advised that on July 9, 2021 he was awakened by someone pounding on his door, and when opening the door, the tenant was confronted by a staff member and a police officer, which differs from the testimony of the landlord's agent, who stated that police were unable to talk to him. The tenant was ordered off the property for 48 hours. That happens regularly to give management an opportunity to meet and discuss what disciplinary action should be taken. The Advocate was advised later by a staff member that tenants are actually told that they are barred for at least 48 hours, not just 48 hours.

On the following Sunday evening, which was more than 48 hours later, thinking that the tenant could return, he was denied entry and was told he would have to wait for the Program Manager before being allowed back in. The Advocate saw the tenant leave the building after that conversation. The tenant told the Advocate what had happened. When the tenant was told he would have to wait for the Program Manager, he was under the impression that a meeting would be held on Monday, July 12. The landlord's

agent had testified that police were called on July 11, which was the day that the tenant returned to the building believing he would be allowed back in. That may be the reason he was agitated; more than 48 hours had passed and based on what he had heard, there would be a meeting and after 48 hours he could return.

The Advocate spoke to staff on behalf of the tenant and was told that the tenant would not be allowed back until a meeting could be arranged with the Program Manager, who was not on site on a Sunday and would not be back until the following Tuesday, July 13.

Police were called on July 12 and by that point the tenant had been out for 4 days. The meeting did not occur on July 13. The Program Manager was unable to find the tenant to arrange a time to meet, but the tenant was on the street. The Advocate saw the tenant later that evening; he camped outside the building all night because he didn't want to miss the meeting. A photograph of the tenant sitting outside the complex has been provided for this hearing.

The Advocate attended a meeting on July 14, 2021 with the Program Manager, who gave the tenant a letter requiring the tenant to move out by July 15, which was 24 hours notice. A copy of the letter dated July 14, 2021 has been provided for this hearing. It states that the landlord has decided to end the tenancy and states that the tenant must move out by July 15, 2021 and the tenant's belongings will be removed and stored; the tenant can retrieve belongings only when accompanied by police.

The Advocate was shocked. At the conclusion of the meeting the Advocate called the Director of Housing Services to protest the decision. The Director advised that it was being looked into and asked the Advocate to provide an email setting out those concerns, which the Advocate did. The Advocate attended the building later and the tenant was standing outside. The tenant told the Advocate that the landlord had withdrawn the letter and replaced it with a One Month Notice to End Tenancy for Cause.

The tenant had been removed, was on the street and had no where to go. The Advocate submits that it's inappropriate and an unacceptable policy the "at least" could be indeterminate. The practice of barring people for 48 hours is not set out anywhere in writing and is subject to interpretation, and in this case mis-interpretation. It should be set out in writing, by Notice or in the Agreement so tenants can make suitable arrangements.

The Advocate has also provided a letter and a string of emails, which, in short provide that the landlord in this case is not registered with the Assisted Living Registry. Also,

the program agreement is flawed and includes terms that should not be there, specifically that the *Residential Tenancy Act* does not apply, and that it does.

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. In this case, I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) 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.

The *Act* does not permit a landlord to remove a tenant for any reason. I have reviewed the Program Agreement, and I agree that it specifies that the landlord may end the Agreement by giving less than 24 hours written notice for criminal activity including assault or threatened assault, however tenancy agreements must not contain any terms that are contrary to the *Act*. The *Act* specifies how a tenancy ends and one of the ways a tenancy ends does not include expulsion. The tenant remained on the street until the Advocate disputed the late findings of the landlord's agents.

Further, the landlord's agent who first testified was incorrect in the testimony; the incident was not between 2 roommates. He also testified that the incident occurred because the other tenant owed the tenant \$20.00. That has not been substantiated by the Program Manager or the Advocate or by any evidentiary material.

I have reviewed all of the evidentiary material including the still photographs taken from the landlord's video which show that each of the tenants was on the floor at one time or another.

I am not satisfied that the landlord has established that the incident was unprovoked by the other tenant, or that the landlord has complied with the law. Therefore, I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated July 14, 2021 is hereby cancelled and the tenancy continues in accordance with the *Residential Tenancy Act*.

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: November 18, 2021

Residential Tenancy Branch