



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNC

Introduction

The tenant seeks to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”).

The parties, and a support person for the tenant, attended the hearing. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began in 2008. Monthly rent is \$462.00. The rental unit itself is a townhome located within a larger residential property comprising fifty townhomes. A copy of the tenancy agreement was in evidence.

The landlord testified that on June 28, 2021, the tenant’s son (who resides with the tenant) got into an altercation with the next-door neighbour’s guest, or nephew. There was an attempted scuffle between the two of them. Someone called the RCMP.

Shortly after the attempted scuffle, the tenant’s son went into the backyard. After a brief moment, the son started accusing the neighbour’s nephew of, among other things, being a paedophile. Then, the son physically tried to assault the neighbour herself and kicked a BBQ at her. The RCMP finally arrived and took the son into custody.

Not long after apprehending the son, the RCMP also took his mother, the tenant, into custody. It was shortly after this incident that the landlord served the Notice on July 5, 2021. A copy of the Notice is in evidence.

Last, the landlord testified that there have been further incidents involving the tenant after the Notice was issued. These incidents, the landlord remarked, “are added validity” to the reason why the Notice was issued.

The landlord also provided into evidence a copy of an email dated June 30, 2021, in which the neighbour (S.S.) tells the landlord about the incident of June 28. The description is written in a rather stream-of-consciousness style, but a relevant excerpt concerning the tenant’s son behavior reads as follows (reproduced as written):

[. . .] the 17 year old comes out yelling snitching whore all u do is starv your kids and let them run around naked while u spread your legs to be a whore and kicks the black portable bbq at me and tried to kick me at the same time saying I was on his property. [. . .]

In her testimony, the tenant explained that despite being taken into custody by the police (and then spending the night safely locked up in the “drunk tank”) she and her son were never charged with an offense.

The tenant testified that her son got into a dispute with the neighbours because he was trying to help a girl who had been “dumped” by someone related to the neighbour. “[He] was helping a young girl,” she said. And that “my son stepped in and tried to help the girl.” The son became quite upset and the tenant attempted to calm him down.

After this entire incident, the tenant tried to communicate with (and confront, she mentioned) the neighbour in unit #4, but the woman has blocked the tenant on her phone. The neighbour nevertheless “keeps making up stories” about the tenant, she added.

Analysis

In an application such as this, where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the reason for the Notice being given.

Page two of the Notice indicates that it was issued under subsections 47(1)(d)(i) and (ii) of the Act, and under subsection 47(1)(e) of the Act.

Subsection 47(1)(d)(ii) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if “the tenant or a person permitted on the residential property by the tenant has [. . .] seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.”

In this dispute, the landlord’s oral and documentary evidence, supported in large part by the neighbour’s written complaint email of June 30, 2021, persuades me to find that the tenant’s son (who is a person permitted on the residential property) seriously jeopardized both the health and safety of the neighbour (that is, another occupant). The name calling is one thing, and insufficient to give reason to end a tenancy, but the attempted assault along with kicking the BBQ at the neighbour is wholly unacceptable and placed the neighbour’s health and safety in serious jeopardy. Indeed, that the RCMP were required to remove the son is indicative of the seriousness of the incident.

The tenant’s testimony paints a rather different picture of the incident, yet there is no evidence to support her version of events. Further, it is not lost on me that a mother will more likely defend the actions of her son, thus causing me to call into question of the veracity or accuracy of testimony. Quite simply, I believe the landlord’s testimony and evidence over that of the tenant’s.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving a section 47(1)(d)(ii) ground for issuing the Notice. As the landlord has proven one of the three grounds on which the Notice was issued, I need not consider the remaining two grounds.

Given the above, the tenant’s application to cancel the Notice is dismissed. Section 55(1) of the Act states that if a tenant applies to dispute a landlord’s notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord’s notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form. In this dispute, I find that the One Month Notice to End Tenancy

for Cause issued by the landlord on July 5, 2021, complies with the requirements set out in section 52.

Pursuant to section 55(1) of the Act the landlord is granted an order of possession. A copy of this order of possession is issued in conjunction with this decision, to the landlord. It is the landlord's responsibility to serve a copy of the order of possession on the tenant by any means permitted under section 88 of the Act.

Conclusion

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

The landlord is granted an order of possession, which must be served on the tenant, and which is effective two days from the date of service. This order may be filed in, 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 Act.

Dated: November 16, 2021

Residential Tenancy Branch