



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, MT, the Landlord's Witness, KD, and the Tenant, WT, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the One Month Notice on the Tenant on October 28, 2021 by placing the document in her mailbox. The Tenant confirmed receipt of the One Month Notice as the Landlord routinely picks up the rent cheque from her by picking it up in the mailbox. I find that the One Month Notice was served on the Tenant on October 31, 2021 pursuant to Sections 88(f) and 90(d) of the Act.

The Landlord personally served his evidence on the Tenant approximately November 23, 2021. The Tenant confirmed receipt of the Landlord's evidence. I find that the

Landlord served the Tenant with all his evidence on November 23, 2021 pursuant to Section 88(a) of the Act.

The Landlord was alerted by the Tenant's uncle that a Notice of Dispute Resolution Proceeding package was served on the Landlord by the Tenant by leaving the package in the Tenant's mailbox on November 1, 2021 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package on November 1, 2021. I find that the NoDRP package was sufficiently served pursuant to Section 71(2)(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's One Month Notice?
2. Is the Tenant entitled to recovery of the application filing fee?
3. If the Tenant's application fails, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on September 1, 2020. Monthly rent is \$2,000.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. The details of the events were:

On August 24, 2021 at approximately 4 P.M., WT, my tenant of [address of residential property] uttered threats and physically assaulted my tenant, KD of [address of KD's residential property] in front of the side by side duplex property. WT, has been criminally charged with Assault and Uttering Threats as documented under Court file #XXXXXX-1 and Crown File XXX:XX-XXXXX.

She is, also, under a no contact order as a condition of her release and is not to speak to or contact KD or be on the property of [address of KD's residential property].

The effective date of the One Month Notice was November 30, 2021.

The Landlord stated that WT and her boyfriend have a stormy relationship, there are a lot of disputes and police attendance at the home. On August 24, 2021, the Landlord testified that WT was charged with uttering threats and assault on KD, and the Crown accepted the charges. KD is the tenant who lives in the other side of this duplex residential property. WT's boyfriend was also arrested and charged, and he has a no contact order against WT, but is often still in the home. WT's boyfriend is one of the parties involved in the violent events. The Landlord stated he has not been an eyewitness to the violent events in the rental unit, but he estimated the police have been called more than 10 times because of abusive and loud incidents.

WT testified that KD is the person harassing her. She states that he has threatened her, tells her he is going to get her evicted and calls her derogatory names. WT maintains that her boyfriend does not live in the residence, he has a serious mental health condition, and he is not compliant with his medications. WT has two daughters that are 11 and 15 years old. After the event on August 24, 2021, WT says she is now in counselling.

KD stated that when WT first moved in, everything was fine. His mother-in-law resided in a basement suite in WT's residential property, but KD stated that WT's boyfriend would run up and down the stairs in the home and his mother-in-law did not feel safe. KD testified starting in March 2021, the fighting and arguing between WT and her boyfriend escalated to throwing items and smashing TVs. KD reported in about the third week of June, WT's boyfriend physically assaulted her. He said he did not witness the assault, but he knows it is in front of the courts. KD stated that, despite WT's boyfriend having the no contact order to the property, KD still sees him coming in and out at the back of the property. He also stated that sometimes WT will get in her car, drive around the corner, and her boyfriend will run out of the rental property and get in the car. The week before the August 24 incident, there was loud fighting going on in the rental property. KD called the police, and the police came with a search warrant. WT did not allow them inside the home. So, the police hid down the street with binoculars and they observed WT's boyfriend looking out the bedroom window.

The Landlord stated that KD has installed video cameras because his internet lines were cut. KD said the lines have been cut two times, and that was the reason he installed the cameras. KD does not feel safe and secure in his home, the police have told him not to approach WT's boyfriend.

The Landlord said there are legitimate concerns of safety in the rental unit, and for KD in the neighbouring unit.

WT said she has not been found guilty, and that KD has threatened her on numerous occasions.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this application. It states:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(e) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*

...

(ii) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

Based on the testimony of the Landlord and KD, it appears that WT's boyfriend is still permitted on the residential property despite there being a no contact order against him. WT's statements that KD is abusive and threatening to her are incongruent with the facts that there is a considerable extensive period of abusive, violent and angry outbursts going on in the Tenant's rental unit involving her boyfriend and herself. I find that due to the legal allegations against WT assaulting KD, and WT's boyfriend's continued

presence, the quiet enjoyment, security, safety or physical well-being of other persons in the residential property is in serious and imminent danger. WT has not satisfied me that this is not the case and based on the preponderance of evidence presented by the Landlord, I dismiss her application to cancel the Landlord's One Month Notice without leave to re-apply.

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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.*

I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. Based on my finding that other occupants' quiet enjoyment, security, safety or physical well-being is in serious and imminent danger, I order that the Landlord's One Month Notice is upheld, and I grant him an Order of Possession which will be effective two (2) days after service on the Tenant.

As the Tenant's application was not successful, I do not grant her recovery of the application filing fee.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant.

The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

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: December 20, 2021

Residential Tenancy Branch