



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VERNON NATIVE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

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

- an order of possession for cause, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 38 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. The landlord called in late at 9:36 a.m. The hearing ended at 10:08 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name, spelling, and the rental unit address. She stated that she is a property manager for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She stated that the landlord owns the rental unit. She provided an email address for me to send this decision to the landlord after the hearing.

At the outset of this hearing, I informed the landlord's agent that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord's agent affirmed, under oath, that she would not record this hearing.

At the outset of this hearing, I explained the hearing process to the landlord's agent. I informed her that I could not provide legal advice to her. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

The landlord's agent stated that the tenant was personally served with a copy of the landlord's application for dispute resolution hearing package on December 8, 2021. She said that the landlord's office employee served it and another office employee witnessed it. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's application on December 8, 2021.

The landlord's agent testified that the tenant was personally served with a copy of the landlord's One Month Notice to End Tenancy for Cause, dated October 25, 2021 ("1 Month Notice") on the same date. She said that the landlord's office employee served it and another office employee witnessed it. She confirmed the effective move-out date on the notice is November 30, 2021. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 1 Month Notice on October 25, 2021.

Issue to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent stated the following facts. This tenancy began on January 2, 2019. A written tenancy agreement was signed by both parties. Monthly rent in the current amount of \$345.00 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. The rental unit is an apartment in a multi-unit residential building.

The landlord's agent confirmed that the 1 Month Notice was issued to the tenant for the following two reasons, as indicated on the notice:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord's agent testified regarding the following facts. In March 2020, the landlord sent a breach letter to the tenant regarding her unauthorized guest at the rental unit, which is the tenant's daughter. The landlord sent another breach letter to the tenant regarding same in August 2021. The tenant had her daughter stay with her for two weeks because she was not well and the landlord allowed it one time, but that was the only time the tenant had permission. On October 23, 2021, a fight broke out in the hallway of the rental building between the tenant's daughter and granddaughter. It was a "knockdown, drag out, violent" altercation. Other occupants complained to the landlord and called the police. The tenant's daughter left in her car, but the police apprehended her later and took her to a mental health facility. Another occupant heard the screaming during the fight and wrote a letter about it to the landlord, which was provided for this hearing. That occupant was scared to write about anything else. Other occupants are scared to write letters against the tenant because of her daughter being involved in the drug trade. The tenant's daughter keeps staying with the tenant at the rental unit. The tenant has a one-bedroom apartment, she is the only authorized occupant, but she has four people living there, including her daughter and two grandchildren. The tenant has not produced a doctor's note stating that she requires someone to stay with her to help. The tenancy agreement only allows the tenant to reside at the rental unit alone, as guests can only stay there for two weeks. However, the tenant has to report the guests that will be staying with her, to the landlord, as per section 2(a)(5) of the parties' written tenancy agreement.

The landlord's agent stated the following facts. The landlord has issued breach letters to the tenant and then a 1 Month Notice. The tenant has not applied for arbitration regarding the notice. The tenant moved out of the rental unit and moved in with her daughter in early January 2022. The landlord rented the unit to new tenants starting on January 15, 2022. However, the new tenants could not move in because the tenant returned to the rental unit after having a fight with her daughter. The tenant is still living at the rental unit now, although most of her belongings were removed when she first left. The landlord is willing to assist the tenant to move her items out and put them in

storage if the tenant requires it. The tenant is not well, is going through chemotherapy, and is an elderly woman. The tenant's daughter frequently steals the tenant's apartment and car keys, money, and car, when she stays with the tenant. The tenant has no way to leave the rental building if she needs to do so. The tenant is under "bad stress," her daughter is an "addict," and was put in a mental health facility. The landlord found another room for the tenant at a subsidized rate, but the tenant did not move there. The landlord is trying to support the tenant, but the tenant's daughter is a "chronic homeless person," and the tenant keeps allowing her daughter to stay with her at the rental unit. These events have been ongoing since the summer of 2021. The landlord is scared for the tenant and has reported "elder abuse" to the health ministry. In March 2021, the tenant's grandson was found in the hallway "bloodied and beat up," which was unsettling for other occupants to see. The landlord has found syringes in the fire panel box of the fire alarm in the hallway outside the tenant's rental unit, so it belongs to the tenant. The tenant has not paid rent for January 2022 to the landlord. The tenant paid December 2021 rent to the landlord, for which the landlord issued a "use and occupancy only" rent receipt to the tenant. The landlord has told the tenant that an eviction was still being pursued against her. The landlord wants an order of possession, effective immediately, against the tenant.

Analysis

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. As I have found one of the two reasons on the 1 Month Notice to be valid, I do not need to examine the other reason.

I find that the tenant, and people permitted on the property by the tenant, significantly interfered with and unreasonably disturbed the landlord and other occupants at the rental property. I find that the landlord stated detailed reasons for cause on the 1 Month Notice itself, a copy of which was provided for this hearing. I find that the landlord's agent explained these details during this hearing, as noted below.

I accept the undisputed testimony of the landlord's agent at this hearing. The tenant did not attend this hearing. I find that the tenant's daughter and grandchildren, are people permitted on the rental property by the tenant. I find that the tenant and her family members engaged in violent, aggressive, unsafe, inappropriate, and threatening behaviour at the rental property. I find that this caused significant interference and unreasonable disturbance to the landlord's agents and other occupants at the rental property. The landlord's agents and other occupants have witnessed this behaviour.

I accept the undisputed testimony of the landlord's agent, that the behaviour of the tenant and her family members causes fear and concern for other occupants at the rental property. The landlord has received written and verbal complaints from other occupants, the police have been called, and the tenant's daughter has been apprehended. The tenant's daughter and granddaughter got into a violent, physical altercation on October 23, 2021, in the hallway of the rental building, that was witnessed and heard by other occupants. In March 2021, the tenant's grandson was found "bloodied" in the hallway of the rental building. The landlord has reported elder abuse to the health ministry, out of concern for the tenant's safety. Syringes have been found in the fire alarm panel box in the hallway outside the tenant's rental unit. Other occupants are fearful to complain to the landlord about the tenant's daughter, since she is reportedly a drug user. The tenant's daughter has frequently stolen the tenant's car, money, and the keys to the tenant's car and apartment, leaving the tenant with no way to leave the rental building. The landlord is concerned about the tenant's health and mental well-being and has tried to assist the tenant in finding a new subsidized unit, but the tenant has not responded. The above pattern of dangerous behaviour has been ongoing from March 2021 to present.

The landlord's agent provided specific dates and details of the above incidents, in the testimonial and documentary evidence submitted for this hearing. The landlord provided a written complaint, dated October 25, 2021, from another occupant at the rental property, regarding the violent altercation between the tenant's family members in the hallway at the rental property. The landlord provided written breach letters to the tenant, regarding this inappropriate behaviour. The landlord provided copies of the above documents as evidence for this hearing.

The tenant has not made an application pursuant to section 47(4) of the *Act* within ten days of being deemed to have the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to take this action within ten days led to the end of this tenancy on November 30, 2021, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 30, 2021.

I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. I grant the landlord's application and issue an Order of Possession to the landlord, effective two (2) days after service on the tenant, pursuant to section 55 of the *Act*. The effective date of the notice has passed.

I find that the landlord has not waived its rights to enforce the 1 Month Notice, by accepting rent from the tenant after the effective date on the notice, November 30, 2021. I accept the landlord's undisputed evidence that the tenant failed to pay rent to the landlord for January 2022. I accept the landlord's undisputed evidence that the tenant paid rent for December 2021 to the landlord, but the landlord accepted it for "use and occupancy only" and issued a rent receipt to the tenant, indicating same. The tenant even moved out briefly from the rental unit and removed most of her belongings but then returned to the unit later. Further, the landlord did not cancel this hearing, withdraw this application, or cancel the 1 Month Notice. The landlord proceeded to this hearing and pursued an order of possession against the tenant, indicating that it wanted an end to this tenancy.

Conclusion

The landlord's application is granted.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. The tenant must be served with a copy of this Order. Should the tenant or anyone on the premises 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: January 25, 2022

Residential Tenancy Branch