



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

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

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the 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 and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on October 30, 2021 which was witnessed by another resident helper in the building. The Notice of Dispute Resolution Proceeding document states that the Tenant received the One Month Notice which was delivered in person on October 30, 2021. I find that the One Month Notice was served on the Tenant on October 30, 2021 pursuant to Section 88(a) of the Act.

The Tenant applied for dispute resolution for the One Month Notice on November 8, 2021. The Landlord confirmed personally receiving the Notice of Dispute Resolution Proceeding package (the "NoDRP package") on November 10, 2021. I find that the

NoDRP package was served on the Landlord on November 10, 2021 pursuant to Section 89(1)(a) of the Act. The Landlord testified that the Tenant did not provide evidence in his NoDRP package.

Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenant's application, the address for the Landlord and the Tenant are identical. In the hearing, the Landlord provided the suite number for the Tenant and the Landlord confirmed that I could amend this information in the application. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the suite number for the Tenant's rental unit as specified by the Landlord, and I have reported this amended address on the cover sheet of this decision.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession for the rental unit?

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 Landlord testified that this periodic tenancy began on August 15, 2019. Monthly rent is \$500.00 payable on the first day of each month, and his rent is covered by social assistance. A security deposit of \$250.00 was collected at the start of the tenancy and is still held by the Landlord.

The reasons noted in the Landlord's One Month Notice are:

- *the tenant or a person permitted on the residential property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

- *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
 - *has caused or is likely to cause damage to the landlord's property,*
 - *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*

Further details of the causes state *the Tenant has been bringing in unauthorized guests, throughout the Covid-19 lockdowns, day or night, without masks, using our personal toilets, showers, common areas that our other 42 tenants share. His guests cause damages, graffiti, steal, they are loud & cause disturbances.*

The Landlord testified that this rental building has individual rooms, but several tenants on one floor share a bathroom. The Landlord is a resident in the building. The majority of the residents are seniors, and the building has a reputation of being a good building for elderly residents. The Tenant got his tenancy in the building because the person he replaced vouched for him. Previously, he lived in shelters or was homeless.

The Landlord does not think this rental unit is the Tenant's primary place of residence. The Landlord testified that the Tenant often brings prostitutes into the building when he is there. The women he brings in are disruptive, drug addicts, they do graffiti in the building and they have routinely flooded the toilets. As an example, the Landlord stated on the second day of his tenancy, the Tenant brought a woman into the building who removed a hose fixture inside the toilet tank to use for her drug use. She then stuffed toilet paper into the toilet. When the toilet was flushed it continued to run and it overflowed through the ceiling into the business below.

The Landlord said they have visiting hour regulations for any guests. The Tenant brings in guests after the regulation hours after they have left the bar. They continue to party in his rental unit. They are loud and do not care that they are disturbing the other residents in the building. The Landlord testified he has received complaints from other residents because of the Tenant's guests.

The Landlord shared one story about a woman the Tenant brought into the building during 2020 Hallowe'en time. The Landlord had prepared a display for the residents in

the building. The Tenant's guest used her umbrella to remove a bucket of candy from the display. She continued to eat her favourite candies from the bucket and threw the rest onto the floor. This person was looking into the cameras, mocking that she was not wearing a mask and continued to make a mess in the lobby.

One particular prostitute, the Tenant calls 'his sister', comes into the building once per week. She is loud and disturbs the other residents in the building. The Tenant brought in another woman who uses a large backpack. The Landlord said he once barred her entrance into the building. The woman yelled that 'he hit me, he hit me", but the Tenant did not stop the Landlord.

The Landlord said there are many more incidents like this because of the Tenant's residence in the building. His guests have damaged the shared facilities in the building, they are disruptive for the other residents who have complained to the Landlord, and the Tenant and his guests walk through the building unmasked which put the senior residents at risk of contracting Covid-19.

The Landlord is seeking an Order of Possession to restore the peace in his building.

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.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

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:*

...

(d) *the tenant or a person permitted on the residential property by the tenant has*

- (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

...

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

- (i) *has caused or is likely to cause damage to the landlord's property,*
- (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*

...

The Landlord shared many stories of the significant interferences and unreasonable disturbances the Tenant or his guests cause in the building. The Landlord testified that there are many more stories along the same line of conduct by the Tenant and his guests. The Landlord wants to maintain the building's great reputation and needs the Tenant out of the building. Based on all the undisputed testimony of the Landlord, I find that the Tenant and his guests' conduct create significant interference and unreasonably disturb other occupants and the Landlord of the residential property. The Tenant and his guests not wearing masks during the Covid-19 lockdown seriously jeopardizes the health and safety of the senior residents and the Landlord of the residential property. I find that the Tenant and his drug addict guests have engaged in illegal activities that have caused damage to the Landlord's property. I also find that the Tenant and his guests' conduct have adversely affected the quiet enjoyment, security, safety or physical well-being of other occupants of the residential property. I find that the Landlord has proven cause on a balance of probabilities, and I dismiss the Tenant's claim to cancel the Landlord's One Month Notice without leave to re-apply.

As the Tenant failed in his application, I must consider if the Landlord is entitled to an Order of Possession. 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 Landlord's One Month Notice complies with the form and content requirements of Section 52 of the Act. As I have dismissed the Tenant's application in its entirety, I uphold the Landlord's One Month Notice and I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

Conclusion

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.

The Tenant's application for dispute resolution is dismissed without leave to re-apply.

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: January 19, 2022

Residential Tenancy Branch