



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENTICTON AND DISTRICT SOCIETY FOR COMMUNITY
LIVING and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated September 20, 2021 ("One Month Notice").

The Tenant, two advocates for the Tenant, E.W. and J.L. ("Advocates"), and an agent for the Landlord, L.W. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant, his Advocates, and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the Application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2019, with a subsidized monthly rent of \$570.00, due on the first day of each month. The Parties agreed that the social services Ministry paid the Landlord a security deposit of \$300.00 for the Tenant, and no pet damage deposit.

The Landlord submitted a copy of the One Month Notice into evidence. The Parties agreed that the One Month Notice was signed and dated September 20, 2021, it has the rental unit address, it was served by being posted to the rental unit door on September 21, 2021, with an effective vacancy date of October 31, 2021. The One Month Notice was served on the grounds that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; and that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

When I asked the Agent why I should confirm the One Month Notice, rather than cancelling it, as the Tenant has requested, she said:

The most recent letter I've received in complaint about [the Tenant] is dated January 10, 2022; a support worker wrote a letter saying that the Tenant is helping himself to another person's food. He also knocks on Bryan's door, asking for help. He has been asked not to do that.

On October 20, 2021, we received a first letter about how [the Tenant] is inviting

himself into Bryan's apartment, and plays tricks on Bryan. He is taking things out of Bryan's fridge.

On November 15, 2021, we received a letter from another tenant, [R.] alleging assault, that [the Tenant] grabbed her by the back of her hair and tried to pull her up (she's in a chair), and that he punched her in the back of the head. We believe she made a mistake about the date. [R.] reported it to [our worker, C.] the same day, noted as 28th of October. She explained what had happened. [C.] states that [R.] was very upset, her eyes wide, her voice loud, and she said that [R.] had reported it to the police.

In September 2021, we had a meeting with [R.] – showing her a video of [the Tenant] tampering with her scooter in the scooter room, and taking items like sunglasses and a power cord that she did not get back. He has no reason to be in the scooter room. He doesn't have a scooter.

On April 6, 2021, we had a call from another support worker letting me know of screen shots of texts with Matt, who phoned the police about [the Tenants'] behaviour. They were yelling and screaming, and he said he was hearing "Ow," and it was quite aggressive. Matt was worried about people's safety.

From there, we go to December 20th, when we received a letter from Matt, who said he witnessed [the Tenant] tampering with signs about mask mandates.

The Agent submitted an email the Landlord received from a support worker, which said that Bryan had:

...expressed his concerns regarding [the Tenant]. Bryan was very upset while reporting to his outreach worker, stating that [the Tenant] is knocking on his door several times a day, practically invites himself to Bryan's apartment and helps himself with food from Bryan's fridge despite the fact that Bryan objects his actions every time it happens.

[The Tenant] plays tricks on Bryan on several occasions while Bryan was unloading his groceries in front of his door, [the Tenant] would grab the item from Bryan's grocery bag, laughed and run into his apartment giving it to [his wife] and later on returning it to Bryan.

Bryan found [the Tenant's] behaviour annoying and unacceptable. Bryan

requested his support worker put the concerns on the paper officially and reported to the housing office.

The Agent submitted a letter she wrote to the Tenant dated April 6, 2021, about a noise disturbance for fighting, which was reported to the Landlord by another Tenant.

The Landlord also uploaded two videos of the Tenant taking things from a scooter in two different incidents. The Agent indicated that this occurred in September 2021.

The Advocate said:

We went through [the Agent's evidence] package. The dates don't reflect the documents in the package. But in reference to her letter about harassing and disturbing with Bryan's door. The matter was on July 20, 2020, six months prior. On July 20, 2020, there was an incident between the two tenants.

We know that it's socially inappropriate. Bryan knocks on his door letting him know his paper was there. They have mental and physical anomalies as well as . . . not understanding certain boundaries, which is why they are supported. This matter with [the Tenant] was not brought forward to his support worker. It's hard for him to understand that one minute it's okay, and then it's not. Bryan is a friend and knocks on his door.

The second alleged incident with [R.] came after the violation; the dates say – they were changed completely. They said it happened on the 27th, then on the 20th. We actually have pay stubs that prove that [the Tenant] was at work both of those times of the alleged allegation. There's a history between these two people; they had a falling out, and then all of a sudden, there are several complaints with this young lady. The problem is that all of her allegations were not made to [the Tenant's] support workers, and they moved to evict [the Tenant].

The Advocates did not submit copies of the pay stubs to support this testimony.

The Agent said:

I know full well that the tenants are supported for all sorts of different reasons. Our correspondence with the Tenant is lengthy; it is independent living to be clear. When we give notice to a Tenant re breaching an agreement, it doesn't put

us in a position to give it to their support workers. I know [the Tenant] has trouble and misunderstandings with boundaries. But he is also gainfully employed; he had two jobs at one point, so he is able to follow rules to maintain employment. So, for him to have reason to not follow the tenancy agreement - that isn't right. There were severe issues clearly communicated, and here we are a year later, and still disruptions in the building. Two other people affected are Bryan and Matt, not to mention how much his behaviour disrupts my day and my job.

The Advocates said:

The package has only one complaint from Bryan and one from Matt. Of the 17 letters here, the rest are in regard to [R.], which I feel is a personal issue between tenants. It is independent living, he has jobs, but that's with support. [The Tenant] denies laying his hands on [R.], because he was not in the building. The RCMP said that this was not true.

The Agent said: "I don't have anything about that from the RCMP saying it could be untrue." The Advocates said they did not have a report from the RCMP to submit into evidence in this regard.

The Advocate said:

The only other thing – in the video he knew he was wrong when he removed her scooter battery as a bad practical joke. You can see him placing it in the front of the van. She said she did get it back. I feel it's a personal issue between two tenants.

He was at work for all of these accusations for pulling her hair and doing certain things – it says it was witnessed, but it doesn't say who the witness was. [The Tenant] was with our staff and at work. They coincide with his work schedule. And we didn't see any of this.

I asked the Agent if there was an error made in the date an incident was reported. She said:

I don't know [the Tenant's] work schedule. Nothing was brought forward to prove this in documents.... We need to keep our building safe. This has been going on since the tenancy began in 2019. It had to come with this point, once [the Tenant] is tampering with peoples' property. She did get the charger back, but not the power cord.

With [the Tenant] and [R.], it's not practical jokes, but such hatred for each other, I don't know what the cause is, but it's affecting the other tenants in the building and that's what I'm responsible for.

The Advocate addressed the Agent, specifically, saying:

A lot of these incidents happened prior to your position. Our communication with [T., another Agent] is that she doesn't feel . . . she says the truth lies between the stories.

We've tried to meet with them... but [R.] refused to meet and do conflict resolution. And they're putting in all of these things, but no notices that were served. And we have tried multiple times to have meetings. Even documentation from [the Agent] - and she's encouraging the meetings. And [R.] didn't show up. There was one meeting with . . . and then there were no incidents that happened for seven or eight months after that. And now all of a sudden, it's starting again.

There's been nothing from April 6th forward. ...hearsay from two different workers. [the Tenant] and Bryan are friends; they knock on each other's door several times per week. Both parties have developmental delays... he's upset that [the Tenant] drank his Gatorade. But Bryan's knocking on Aaron's door, too. There's no evidence, because he wasn't there, he was at work. There was a date discrepancy - 28th or 27th - at the time referenced, [the Tenant] was at work.

I asked the Agent when the alleged hair pulling incident reported by [R.] happened, and she said:

[R.] noted it as October 20th at 8:15 a.m. But [C.] noted that [R.] approached her on the 28th, saying that [the Tenant] allegedly assaulted her the day before on the 27th.

The Advocate said:

He was at work. He started at 8:00 a.m., so he was at work on the 20th and the 27th. We also double checked that with his employer to confirm he was at work on both those days in question.

The Agent said:

Like to say that I am looking out for the interests of the tenants in the building.

There are constant disruptions, and the common denominator is [the Tenant]. They have submitted nothing to dispute the evidence. There's nothing in front of me from the Tenant or his support workers

The Tenant wanted to speak at the end of the hearing. He said: "When I go to work I always .. I don't do what they're saying, because I'm at work."

His Advocate said: "He's trying to indicate that he's in contact with his wife when he's at work. He couldn't have done the hair pulling thing, because he is at work."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

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
- (iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party.

For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenant unreasonably disturbs and significantly interferes with other tenants, and that these incidents are reported to the Landlord, whose agents then have to address the reports.

Some of the Tenant's behaviours or actions noted by the Landlord occurred after the One Month Notice was served, and therefore, I find that they did not contribute to a reason to issue the One Month Notice. However, these post-service behaviours indicates to me that the Tenant's behaviour was not affected by the threat of eviction, including video evidence of the Tenant having taken things from another tenant's scooter in the parking garage of the residential property.

The incidents that occurred prior to the service of the One Month Notice on the Tenant include reports from Matt about the Tenant and his wife screaming and yelling at each other in April 2021. There are also the ongoing interactions between Bryan and the Tenant. I infer that they are friends to a degree, as I find from the evidence before me that Bryan knocks on the Tenant's door to let him know that the paper is there. However, the evidence also indicates that the Tenant sometimes goes to far, crossing Bryan's boundaries, by helping himself to the food and/or drink in Bryan's refrigerator.

I am concerned by the reports of the interactions between the Tenant and [R.], including meddling with her scooter; however, I find that there is some question as to whether [R's] allegation of hair pulling and assault actually occurred.

I find it more likely than not that the Tenant's behaviours does not reflect any maliciousness on the Tenant's part. I find it more likely than not that his developmental anomalies result in these incidents. While it appears that the residential property is a facility for people with such anomalies, I find that the Tenant must still behave in a manner that is not unreasonably disturbing to other tenants or the Landlord's agents. I find from the evidence before me that Matt, Bryan, and [R.] have been unreasonably disturbed and significantly interfered with by the Tenant's behaviour. I also find it disturbing that this type of behaviour continued after the One Month Notice was served. As such, I find that the Tenant may not be able to change his behaviour, which is unacceptable in this residential property.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to

support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. I, therefore, dismiss the Tenant's Application wholly, without leave to reapply.

Given the above, and pursuant to section 55 of the Act, I award the Landlord with an Order of Possession for the rental unit. As the effective date of the One Month Notice has passed, the effective date of the One Month Notice will be two days after it is deemed served to the Tenant.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to meet their burden of proof on a balance of probabilities. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of October 31, 2021.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 09, 2022

Residential Tenancy Branch