



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Regarding **CANADIAN APARTMENT PROPERTY REAL ESTATE INVESTMENT TRUST** and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP

Introduction

On October 8, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking a repair Order pursuant to Section 32 of the *Act*.

The Tenant attended the hearing. L.W. and A.G. attended the hearing as agents for the Landlord. L.W. advised that she was not the Landlord, and she provided the name of the company that the Landlord does business as. As such, the Landlord’s name has been amended on the Style of Cause of this Decision to reflect this correction.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package, by registered mail on October 18, 2021, to the Landlord’s address that was listed on the Notice (the registered mail tracking number is noted on the first page of this Decision). He stated that this was returned to sender. He then testified that he served his amendment to L.W. by email on or around October 18, 2021.

L.W. advised that the Landlord was never served with the Tenant's Notice of Hearing package; however, she acknowledged that she neglected to provide the complete service address for the Landlord on the Notice and the tenancy agreement. She then stated that she only knew of this hearing when she was sent a reminder from the Residential Tenancy Branch on January 25, 2021. As well, she denied receiving any email from the Tenant, let alone his amendment by email. It was brought to her attention that, in her own documentary evidence, she submitted an email dated October 19, 2021 where she wrote, "Hi Andrew, the email, you sent on October 17, 2021 is an amendment forms [sic], not forms disputing the original notice we served you. In order to dispute the notice, you had to file for a hearing within 13 days of receiving the notice; October 13th. As per mention [sic], we have not received a Notice of Dispute Resolution Proceeding package from you."

L.W. could not provide an explanation for why she was initially untruthful about not receiving this email. Furthermore, she continued to claim that the Landlord was not served the Amendment, despite what she wrote in the email. In addition, she continued to claim that she was not aware that the Tenant had filed to dispute this Notice, contrary to what her emails submitted as documentary evidence portray. When she was asked why the Landlord did not apply for an Order of Possession if it was her position that they had no idea that the Tenant disputed the Notice, she stated that it was because she was "on vacation sometimes" and that no one else knew of the file.

When reviewing her testimony, it was evident that she was not being truthful as her testimony was clearly inconsistent and contradictory. It was obvious that she was aware that the Tenant had disputed the Notice, yet she made no effort to get information about the hearing from the Residential Tenancy Branch from October 2021 onwards. It was only when she received a reminder email from the Residential Tenancy Branch about the hearing that she decided to submit the Landlord's evidence. The doubts created by L.W.'s suspect testimony cause me to question her credibility on the whole.

Regardless, as the Tenant served the Notice of Hearing and evidence package to the address provided to him by the Landlord, I am satisfied that the Landlord has been deemed to have received this package five days after it was mailed. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision. In addition, as it appears as if L.W. did receive the Tenant's Amendment, I am satisfied that the Landlord has been sufficiently served this Amendment.

L.W. advised that she served the Landlord's evidence to the Tenant on January 31, 2022 by registered mail. The Tenant confirmed that he received this on February 2, 2022, and despite it being served late, he stated that he was prepared to respond to it. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claim was dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2015, that the rent was owed in the amount of \$1,138.00 per month, and that it was due on the first day of each month.

A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

L.W. advised that the Notice was served to the Tenant by posting it on the Tenant's door on September 28, 2021. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord." The Notice indicated that the effective end date of the tenancy was October 31, 2021.

A.G. advised that on September 27, 2021, the Tenant entered the Landlord's office and made comments to her in a highly inappropriate, sexual manner that she deemed to be offensive. As well, he yelled insulting comments about the Landlord's employees and the quality of the work that they did. She did not feel safe in his presence, and on the advice of her manager, she called the police the next day. She stated that the police went to the Tenant's unit on September 28, 2021 about this incident; however, she was not sure of the outcome of this visit. She submitted that the police had to attend to his rental unit previously due to other disturbances he caused. She stated that there was a police statement, but this was not submitted as documentary evidence.

She testified that other female residents in the building have made complaints to her about the Tenant making unwanted, sexually explicit remarks to them. In addition, she submitted that the Tenant stated that he did not want the "black guy" in the rental unit, and that this was in reference to the Landlord's maintenance person. She stated that he informed her that if this person entered the rental unit, he would "throw him out the window." Furthermore, she testified that the Tenant told her that if she called the police, he would "kill them" and that he "has a big knife". She advised that the Tenant is always yelling, that he is aggressive, and that it is not safe for the Landlord's employees to commence work in the building or the rental unit. She did not submit any documentary evidence to support any of these allegations.

The Tenant advised that L.W. and A.G. made false statements. He confirmed that the police talked to him on September 28, 2021, but it was only for one minute. He was not combative, and he did not break any laws. He referenced the medical documentation, that he submitted as documentary evidence, and he stated that he was on new medication during the incident on September 27, 2021 and he had a bad reaction. With respect to the comments that A.G. alleges were made on this date, he claimed that due to the drugs, he "had no idea what [he] said" and he apologized if he said anything inappropriate. As well, he stated that he "didn't remember what he said to the police" on

September 28, 2021 due his reaction to the new medication. He stated that he went to the doctor and had his medication changed a few days after this incident.

With respect to A.G.'s allegations of the Tenant making unwanted, sexually explicit remarks to other female residents in the building, he stated that he may have said "can you do a turn?" and he did not deny potentially making inappropriate comments to them. He again claimed that he did not know what "off the cuff comments" he might have said, but this would have solely been due to the medication. He did dispute the allegation of racist remarks directed towards the Landlord's employee.

Regarding A.G.'s allegation of the Tenant's remark about killing the police, the Tenant did not deny making this statement and his first response was that "everybody has a big knife." He then stated that he has lots of knives in the rental unit, in reference to his kitchen. He continued that he "doesn't need to carry a knife" and that he "could use a chopstick if he wanted to kill someone."

He testified that he is fine now that his medication has been changed. He apologized for any comments that he may have unknowingly made while he was on this other medication, and he stated that he was ashamed of his behaviours.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the

Act reads in part as follows:

Landlord's notice: 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

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I must turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

I note that no documentary evidence has been submitted to support A.G.'s solemnly affirmed testimony. However, while the Tenant disputed some of her allegations, he did not deny that some incidents happened, and he would mostly attribute this to the new medication that he was prescribed. Despite this, many of the interactions that were not disputed were highly offensive, inappropriate, and not acceptable by any stretch of the imagination. While he claimed that this was due to his change in medication, I note that he has submitted his medical records; however, there is no medical documentation confirming that his medication would be responsible for any of these behaviours. Furthermore, it was noted in a doctor's letter dated October 4, 2021 that the Tenant "has a diagnosis of chronic alcoholism and alcohol induced mood disorder."

When reviewing the totality of the evidence before me, in my view, the actions and behaviours not disputed by the Tenant were unquestionably inappropriate, tasteless, and unacceptable. I find that they demonstrate a pattern of behaviour that I do not believe is isolated. I find it more likely that not that this is representative of the Tenant's general demeanour, and while it may have been exacerbated by the change in medication, I am not satisfied, on a balance of probabilities, that the Tenant does not generally act in a manner that is unacceptable, at the very least.

Based on my assessment of the evidence and testimony of the parties, I am satisfied that the Tenant has purposefully engaged in a clear, consistent pattern of aggressive,

profane, hostile, belligerent, unacceptable, increasingly threatening, and wholly inexcusable behaviour. It appears as if much of the Tenant's hostility stems from his belief that the Landlord is not completing necessary repairs to the rental unit. As I am satisfied that the Tenant's inappropriate and malicious actions are more consistent with A.G.'s testimony, I find that I prefer the Landlord's evidence on the whole.

As the Landlord's Notice is valid, and as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

The effective end date of the tenancy of October 31, 2021 on the One Month Notice to End Tenancy for Cause is changed to the nearest date that complies with the law. Since that effective date has passed, I grant the Order of Possession effective **two days** after service of this Order on the Tenant.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant 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: February 8, 2022

Residential Tenancy Branch