Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHS Community Services Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "*Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate. The corporate landlord was represented by its agents with agent SH primarily speaking (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The tenant submits that they served the landlord with their application, notice of hearing and evidence by registered mail sent on December 8, 2021 and March 1, 2022. The landlord testified that they have no record of receiving the materials. The tenant provided two valid Canada Post tracking numbers as evidence of service. Based on the evidence I find the landlord deemed served with the tenant's materials on December 13, 2021 and March 6, 2022 respectively in accordance with sections 88, 89 and 90 of the *Act*. Pursuant to Residential Tenancy Policy Guideline 12 the failure of a party to pickup or accept materials served by registered mail does not rebut the deeming provisions of the *Act*.

The tenant confirmed receipt of the landlord's evidence but submits that the documentary materials were served outside of the time frame provided in Residential Tenancy Rule of Procedure 3.15 on March 17, 2022 and they have not had an opportunity to review the materials. The tenant also submits that the landlord submitted digital evidence which they were unable to access.

As I find the consideration of evidence which was not served in accordance with the time requirement of the Rules and in a format that was inaccessible to the tenant would be unduly prejudicial and result in a breach of the principles of procedural fairness, I exclude the landlord's evidence package from consideration.

I have considered those pieces of evidence included in the landlord's package that the tenant confirmed having received on prior occasions (eg/ correspondence between the parties, tenancy agreement). I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure, which outlines the circumstances whereby an Arbitrator can consider late evidence.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in 2016. The tenant was previously residing in another property managed by the landlord. The current monthly rent is $375.00 payable on the first of each month. The rental unit is a suite in a multi-unit supportive housing building of 80 units.

The landlord issued a 1 Month Notice dated November 30, 2021. The reasons provided on the notice for the tenancy to end is:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant, has has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.*

The landlord testified that the tenant has engaged in ongoing disruptive behaviour including threats of violence and altercations with other tenants and the staff, verbal harassment of staff and health professionals attending at the rental building, preventing emergency services from entering the rental building, throwing urine and feces out of an upper level window, placing padlocks on the rental unit door without authorization, causing fire alarms to be disconnected, and preventing other occupants from using common areas.

The landlord provided cogent testimony on the instances of disruption by the tenant, quoting from incident logs by staff members, citing specific dates of violations and describing in detail the incidents and their effect on the staff and other occupants.

The landlord testified that the incidents are not isolated occurrences but part of a pattern of escalating behaviour that has increased over the past few years. The landlord testified that they have taken various steps to resolve the issues including issuing verbal and written warnings, attempting to work with the tenant and exploring solutions to the tenant's concerns for safety and security. The landlord said that despite their best efforts the tenant's conduct has continued to cause disturbance and their behaviour has adversely affected the well being of the other occupants of the property and the staff members such that a 1 Month Notice was issued.

The tenant disputes the allegations of the landlord and testified that they have not engaged in any conduct that could reasonably be considered disruptive, harassment or violent. The tenant submits that all of the incidents cited by the landlord are false or inaccurate. The tenant disputes that they have thrown urine and feces out the window or have prevented emergency services from entering the building. The tenant spoke at length about how they believe the landlord's staff are unprofessional in performing their duties, leave their station unattended, and have failed to provide safety and security such that they felt it necessary to padlock their rental unit door or bar others from approaching them in common areas.

The tenant said that they believe the complaints are “personal not professional” and there is no factual basis to most of the allegations. The tenant suggests that the complaints are fabricated by individuals who want to have the tenant removed from the building.

The tenant’s advocate noted that the landlord’s agent SH has no first-hand knowledge of the incidents cited and the landlord’s submissions consists of hearsay evidence and allegations made by unidentified complainants.

The advocate submits that the rental property is supportive housing intended to support individuals with physical and mental health issues, substance dependencies, economic vulnerabilities and a history of displacement and colonization and what is considered unreasonable disturbance forming the basis for cause to end a tenancy must be reviewing within this context.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

Based on the totality of the evidence I find that the landlord has met their evidentiary onus to establish that there is a basis for this tenancy to end. I am satisfied with the cogent, consistent and detailed testimony of the landlord that there have been multiple instances of the tenant’s actions causing unreasonable disturbance and significant interference with the other occupants of the property and the landlord’s staff.

Section 75 of the Act provides that:

> **75** The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

(a)necessary and appropriate, and

(b)relevant to the dispute resolution proceeding.

While I agree with the tenant's advocate who notes that the landlord's submissions consist of hearsay evidence, I find the oral submissions to be relevant to the issues at hand and necessary and appropriate. I find that hearsay evidence has some limited probative value.

In the present circumstances, even limiting the weight given to the hearsay evidence, I find there is a preponderance of evidence to support the landlord's position that there have been multiple incidents of unreasonable disturbance and interference on the part of the tenant that gave rise to a basis for the issuance of the 1 Month Notice. The landlord provided detailed accounts of incidents where the tenant has verbally berated staff, hostile interactions, and examples of unacceptable behaviour. The tenant's own testimony confirmed that they have disconnected the fire alarm in their unit due to its excessive noise level and had installed padlocks on their rental unit door.

While the tenant categorically denies the landlord's evidence of altercations with staff and other occupants, I find their testimony has little air of reality. The tenant attributes the complaints to personal animosity from some individuals and that there is no truth to any of the allegations. The tenant denies that there have been any incidents as cited by the landlord. In order to accept the tenant's position, I must find that either the landlord or several other occupants of the rental property wholly fabricated the multiple complaints and incidents over the course of this tenancy. I find the position of the tenant to stretch credulity. I find the more probable and reasonable explanation to be that there have been incidents throughout the course of the tenancy involving the tenant that were reported and recorded.

I accept the evidence of the parties that on occasions the tenant has prevented other occupants from accessing the common areas out of a desire for privacy, have disconnected the fire alarm due to their dislike of the excessive noise and have installed padlocks on their rental unit door out of a desire for security.

I accept the landlord's evidence that the tenant has engaged in behaviour and conduct that has antagonized, disturbed and interfered with the landlord's staff and other occupants of the rental property. These incidents include both hostile verbal altercations and some physical interactions. I accept the testimony of the landlord that the incidents have resulted in multiple warnings to the tenant, internal incident reports,

attendance by police on occasions and concern from the other residents for their safety and well-being.

I find the advocate's submission that what is considered unreasonable disturbance must be viewed in the larger context of the character and nature of the tenancy and rental property to have merit. However, even when considered against the larger context of the tenant's background and the landlord's stated mission of providing housing for vulnerable populations, I find the tenant's conduct to be unreasonable.

The evidence of the parties is that this has been a long-standing tenancy commencing in 2016. The landlord gave evidence that they have issued multiple warnings to the tenant both verbal and in writing, have attempted to intercede in conflicts between occupants, and have attempted to accommodate the tenant's request for less disruptive fire alarms and their concern for security of their rental unit. The landlord testified that they have exhausted all other options leading to the issuance of the present 1 Month Notice.

I find the incidents cited by the landlord to be reasonable examples of behaviour that would cause disturbance and interference from others, even in the context of supportive housing. The description provided by the landlord is not merely verbal arguments but repeated instances of hostile yelling which at times escalates to physical altercations.

I find that barring others from using common areas to be an inherently unreasonable act which adversely affects the right to quiet enjoyment of other occupants. I find that the tenant's desire for privacy does not supersede the rights of all of the other denizens of the rental property to use common areas.

I further find that disabling fire alarms or placing unauthorized padlocks on the rental unit door are actions that place the property at significant risk of damage. Fire alarms must be audible in order to effectively alert residents and I find that disabling the alarms places all of the occupants of the property at risk.

The tenant cites their own medical history and economic vulnerability as mitigating factors to allow for cancellation of the 1 Month Notice. While the submissions of the tenant and their advocate provides context for the matter before me, I find it is insufficient to determine that the behaviour of the tenant is insufficient to form a ground for ending this tenancy. The tenant's particular background and circumstance does not give rise to conduct themselves as they view appropriate without regard for the other

vulnerable occupants of the building or the landlord's staff. A landlord must balance the rights of all of the tenants. In this circumstance, I am satisfied that the tenant's conduct has caused unreasonable disruption and adversely affected the rights of the other occupants to quiet enjoyment of their tenancy.

Based on the totality of the evidence before me I find that the landlord has met their evidentiary onus on a balance of probabilities that the tenant has engaged in conduct that has caused unreasonable disturbance of other occupants and the landlord, have adversely affected the rights of others to quiet enjoyment, and have placed the property at significant risk of fire and damage.

I find that the landlord has provided sufficient evidence to demonstrate that there is cause for issuing the 1 Month Notice and accordingly dismiss the tenant's application.

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 makes an oral request for an order of possession, and*
>
> *(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form, signed and dated and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

Accordingly, I issue an Order of Possession in the landlord's favour. As the effective date of the Notice has passed I issue an Order effective 2 days after service on the tenant.

I note parenthetically that the parties have both expressed a desire to allow the tenant additional time to find new accommodations. While I issue an Order of Possession the

landlord is under no obligation from the Branch to serve or enforce this Order immediately.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant 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: March 23, 2022

Residential Tenancy Branch