



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gorge View Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order to have the landlord make repairs to the rental unit.

The hearing was conducted via teleconference and was attended by the tenant; his two witnesses and three agents for the landlord. I note the original hearing was held on January 10, 2022, but due to unforeseen circumstances the Arbitrator who had conduct of the file is no longer available to complete the decision. As such, the hearing was reconvened before me.

Both parties confirmed receipt of each others evidence. While the tenant originally refused to accept the landlord's registered mail package the landlord confirmed it was then sent to the tenant by email. The tenant submitted that he refused to accept the landlord's evidence originally because he believed that the landlord had served him too late, based on incorrect information he obtained related to the deadlines for service.

For future reference, the tenant should be aware that if he receives evidence late, he should not refuse it as it is up to an Arbitrator to determine if the landlord served the evidence correctly and whether or not the Arbitrator will consider it. Had the landlord not served the tenant by email the tenant would have been at a disadvantage in preparing his submissions to this hearing, as the landlord had served all of their evidence on time and in accordance with the *Residential Tenancy Act (Act)* and Rules of Procedure.

The landlord sought to exclude documentary evidence submitted to the RTB and served to the landlord on January 4, 2022 (6 days prior to the original hearing). The landlord submitted that the original Arbitrator excluded it as being late.

However, as this hearing was almost three months after it was served to the landlord and despite the landlord not providing any written submissions in response to that evidence, I find the landlord's agent EB was in attendance at the hearing and had an opportunity to respond to the evidence that directly impugned her previous written

statement. I also note the tenant raised the same issues identified in this evidence through his oral testimony and the landlord provided responses to the tenant's position in their oral testimony. As a result, I find there was no prejudice to the landlord to allow this evidence in this hearing and I have considered it as part of this decision.

At the outset of the hearing the landlord sought to allow oral orders made by the previous Arbitrator relating to some amendments made to the tenant's Application and procedural issues. The tenant objected to the acceptance of these oral orders. As such, I have considered these issues solely based on the submissions made by the parties at this hearing.

Both parties confirmed that the repairs sought by the tenant in this application had been completed prior to this hearing and the tenant agreed to amend his Application to exclude his request for repairs. In addition, the landlord noted that the original Application named one of the agents of the landlord and they sought to have the Application amended to name the society as the landlord named as respondent.

The tenant stated he did not know the name of the landlord and the only name he had was the agent CS, whose name was on the One Month Notice. I confirmed, from the tenancy agreement that the landlord's name was actually the society name. Once, I identified this to the tenant he accepted the amendment.

I also note that while the tenant did not have a copy of the One Month Notice in front of him during the hearing, I confirmed after the hearing that the One Month Notice did identify the society name as the landlord and the agent CS as the landlord's agent.

I also noted at the start of the hearing that neither party had provided a copy of the One Month Notice to End Tenancy for Cause that was the subject of this dispute. The parties agreed to the relevant content of the Notice, and I allowed the landlord to submit a copy of the Notice into the Residential Tenancy Branch Dispute Management System (DMS) during or immediately after the hearing. I confirm the landlord did upload a copy of the notice and I am satisfied that the content reflects the content described during the hearing.

Finally, I note that because this is an Application for Dispute Resolution submitted by the tenant seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy. I also note the landlord specifically requested an order of possession should the tenant not be successful in cancelling the One Month Notice.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the Act.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the Act.

Background and Evidence

Both parties submitted a copy of a tenancy agreement signed by the parties on August 21, 2019 for a month to month tenancy beginning on September 1, 2019 for a current subsidized monthly rent of \$426.00 due on the 1st of each month with a security deposit of \$300.00 paid.

As noted above the landlord submitted a copy of a One Month Notice to End Tenancy for Cause issued on August 27, 2021 with an effective vacancy date of September 30, 2021 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In the Details of the Event(s) section of the Notice to End Tenancy the landlord wrote:

“[The tenant] has exhibited a pattern of behaviour that causes [the landlord] concern for the safety of residents and staff at [the residential property], including ongoing harassment of residents, staff, people and construction workers through yelling, swearing, name calling and intimidation. Most recent examples include:

March 29, 2021: [The tenant] became angry at a sub-contractor of [carpet company] who had come to replace his floor, so angry the person had to leave. [The tenant] then repeatedly called [carpet company], extremely angry and threatening. [Carpet company] now will not work in [the tenant's] suite.

June 8, 2021: [The tenant] verbally attacked a member of staff and residents working in the garden outside his house for talking too noisily.

July 13, 2021: [The tenant] informed the Operations Manager, [EB], that he had gone to prison for strangling his former girlfriend. He described in detail how that had happened. As a result, [Ms B.] has been concerned for her own safety.

July 22, 2021: [The tenant] verbally attacked the neighbour beside [the residential property] because he felt the gathering in her backyard was too noisy. He called the police, but they took no action. He also went to the neighbour's door to further complain about that and their backyard chickens. The neighbour has complained to [the landlord] about his behaviour and expressed her concern for her physical safety.

July 28, 2021: [The landlord's] Executive Director had a phone conversation with [the tenant]. It was agreed that any kind of noise was a trigger for [the tenant] and he became angry very quickly. It was also agreed that in future [the tenant] would speak to the Executive Director, rather than engaging with the neighbours or other people working at [the residential property].

August 23, 2021: [The tenant] was enraged by a truck driver arriving at 6:30 in the morning to deliver materials to the construction site at [the residential property]. He verbally attacked the truck driver, asked him to come out of the truck and fight, spat and punched the truck. The driver called the police. Since the driver was in the cab with the doors locked, [the police] did not deem the call a priority.

August 23, 2021: [The landlord] received an angry email from [the tenant]. One line was: so PULL UP your panties and do a respectable job that "residential tenancy of BC" would classify as "respectful relations".....because your are NOT doing this now!!!" We consider the use of the word 'panties' to be disrespectful. When asked to use more respectful language, [the tenant] replied "and as for respect....you give it and so will I but until that happens...your are out of luck".

Given the recent incidents and [the tenant's] history of violence and assault, [the landlord] staff have had to put in place measures to ensure staff safety when arriving at and leaving the premises.

The landlord submitted that over the course of the six months prior to the issuance of the Notice to End Tenancy the tenant has exhibited a number of behaviours that have raised concerns for the landlord over the safety of their staff; residents and contractors who may attend the property to do work on the landlord's behalf.

The landlord asserts that the tenant has exhibited unacceptable behaviour with a neighbour outside of the residential property; contractors who attempt to provide the tenant with repairs to his own unit; and contractors who are on site working on the landlord's construction project which will increase the landlord's housing stock.

As noted above, the landlord has provided a description of these events on the Details of Events section of the One Month Notice to End Tenancy for Cause. In addition, the landlord has provided written statements from those impacted by the tenant's behaviour in regard to the noted incidents.

During the hearing both parties provided testimony in regard to four main incidents which include:

- The interactions between the tenant and the flooring contractor;
- A phone call between the tenant and the landlord's Operations Manager;
- The interactions between the tenant and the neighbours outside of the residential property; and
- The interactions between the tenant and the truck driver.

The tenant disputes the landlord has cause to end the tenancy based on these incidents. Specifically, the tenant provided responses to each of these identified incidents.

In regard to the issues with the flooring contractor the tenant submitted that the contractor showed up not wearing a mask and that he "looked and smelled" like he had been drinking and that he damaged his couch. The tenant submitted that he left and did not return so he called the company.

He also states that in regard to the phone call he had with the Operations Manager, he doesn't know what she is talking about in that he never did strangle his former girlfriend and that the description of his girlfriend that the Operations Manager provided is not one that matches his former girlfriend.

While the tenant stated that he had never gone to jail for strangling his former girlfriend, I note that he did not state that he had not said the things the Operations Manager said he had said. When asked if he a criminal record for any violent offense the tenant stated that he would not confirm or deny that he did.

The tenant acknowledged have interactions with the neighbours (outside of the residential property) regarding their noise making and chickens. He stated that other occupants of the residential property had the same issues and that he went to the neighbour to discuss the issues.

The landlord provided that the incident with the truck driver, who was delivering things for the on-site construction project, was the final straw that made them decide to issue the Notice to End Tenancy.

The tenant submits it was the truck driver who was the aggressor and that he was only responding to the truck driver's actions. In support of this the tenant brought a witness who acknowledged hearing some of the interactions between the tenant and the truck driver.

Witness D.O. stated that he had woken up early and saw the tenant walk over to the truck and start talking to the driver. He heard the driver say an expletive phrase. The

witness stated, after that he had not paid any further attention and did not hear anything else.

I note the written statement from the truck driver shows two interactions with the tenant. The initial interactions where the driver provided that he was outside of the truck and the tenant approached him using profanities and directing him to leave the property. The driver wrote that the tenant then left and later approached him again when he was sitting in his truck.

The tenant also had another witness (S.B.) who had no direct knowledge of the events but submitted that he had known the tenant for about 10 years and that they were friends. He stated that he had had some experience with human character being a chaplain. S.B. also provided that the tenant had some “alarming challenges” in his life.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons 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, or
- ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I note that none of the incidents that the landlord has put forward as contributing to their issuance of the Notice to End Tenancy were related to other occupants of the residential property. The landlord submitted that none of the other occupants of the residential property were willing to put forward any documented complaints.

I also note that the landlord did submit evidence in regard to the tenant's behaviour towards a civic neighbour. The landlord noted, during the hearing, that they recognized that there are no obligations under the *Act* that would give rise to cause to end the tenancy because of how a tenant treats a neighbour who is not an occupant of the residential property. The landlord submitted that they provided this evidence to convey the tenant's pattern of behaviour.

Based on the submissions of both parties, I find, on a balance of probabilities, that the landlord has established sufficient cause to end the tenancy.

I find the landlord's testimony and documentary evidence shows a pattern of offensive behaviour that significantly interferes with the landlord's ability to perform their work or to have contractors complete their work on the residential property. I also find the landlord has established that the tenant has seriously jeopardized the safety of the landlord's contractors and staff.

I make this finding, at least in part, on the landlord's submissions from their contractors and staff and the tenant's responses to the allegations. In particular, I find that the tenant does not dispute that the incidents occurred but rather that they did not occur as outlined by the landlord.

In the case of the flooring contractor, the tenant actually confirms that he refused the contractor entry and that he made calls to the contractor's office. In the case of the issues related to the neighbours who live off of the residential property, again, the tenant confirmed the interactions.

In regard to the issues with the truck driver, I find that while the tenant had a witness, I find that the witness provided testimony only in regard to a small portion of the interaction between the tenant and the truck driver, after the driver was back in his truck.

The witness specifically identified that the driver was in the truck when he first saw what was going. As such, the witness did not provide any testimony or evidence of the interactions as described by the driver in his written statement that preceded the interaction when he was in the truck. I also note that the tenant did not provide any evidence or testimony disputing the earlier interactions with the driver.

Finally, in regard to the telephone conversation, I accept the landlord's version of events for similar reasons in that Operations Manager's submissions on the conversation were all related to what she was told by the tenant. There is no evidence before me that she did or could have any knowledge of the veracity of the statements.

In addition, while the tenant submits that he has never been in jail for strangling his former girlfriend he does not submit any evidence or testimony denying that he made those statements during the conversation with the Operations Manager.

Overall, I found the tenant's testimony on all issues to be very specific and controlled such that he was very deliberate in how he responded to the issues. There were no denials of the behaviour that was attributed to him in any of the four specific incidents that the landlord submits as causes to end the tenancy.

As a result, I prefer the landlord's submissions and find that they have established cause to end the tenancy.

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety, without leave to reapply.

Section 52 of the *Act* requires that any notice to end tenancy issued by a 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 find the One Month Notice to End Tenancy for Cause issued by the landlord on August 27, 2021 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I note the landlord acknowledged receipt of rent for use and occupancy for the month of April 2022.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **April 30, 2022, after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: April 3, 2022

Residential Tenancy Branch