



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On February 22, 2022, the Tenant applied for an order to cancel a One Month Notice to End Tenancy for Cause, dated February 22, 2022 (the One Month Notice).

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) and his evidence on the Landlord by email, and the Landlord confirmed he received the documents. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified he responsive evidence on the Tenant in person and by email, both on April 4, 2022, and the Tenant confirmed he received the documents. I find the Landlord served the Tenant in accordance with section 88 of the Act.

Preliminary Matters

At the beginning of the hearing, the Tenant's advocate testified that the Tenant was in the hospital, in pain, and on medication. As the Tenant confirmed he was prepared to proceed and was responding appropriately throughout the hearing, I continued with the hearing.

I have added the Landlord's business name to the cover page of this decision. This name is found on the signed tenancy agreement and the One Month Notice, so the Tenant would have had full knowledge of the business name and will not be prejudiced. This amendment, in accordance with section 64(3)(c) of the Act, is to allow the decision and order of possession to reflect the legal name of the Landlord.

Issues to be Decided

- 1) Is the Tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars of the tenancy: it began November 6, 2020; and rent is \$1,850.00, due on the first of the month.

The Landlord testified that the One Month Notice was served on the Tenant on February 22, 2022, in person, which the Tenant confirmed.

A copy of the One Month Notice was submitted as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. The reasons indicated for the One Month Notice include that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

A letter sent to the Tenant, dated February 22, 2022 and accompanying the One Month Notice, was also submitted as evidence. It includes the following: "We have written to you on 3 other occasions in the last year regarding the condition of your apartment, late night noise and the care of your dog."

The Landlord testified that the Tenant is struggling to look after himself and his dog, and needs additional support. The Landlord testified the Tenant's situation is negatively impacting others.

The Tenant testified that he has "made some mistakes," more so at the beginning of his tenancy, and that he has put great effort into being a better tenant. The Tenant testified that he struggles with a lot of issues resulting from his military service and poor physical health, which have a tremendous impact on his day-to-day living.

The Landlord testified that the Tenant's unit is filthy, smells bad, and contains flies. The Landlord testified that when he was in the unit on June 8, 2021, it was in a generally unclean condition, with food left out, accumulated garbage, and urine in containers on the counter. Photos were submitted as evidence.

The Landlord testified that the smell and flies are noticeable in the hallway outside the unit, and have prompted complaints from other tenants.

The Tenant testified that a support organization pays for a cleaner, but that the cleaner is sometimes not available, once for several weeks. The Tenant testified that one of the times food was left out was when he had to go to the hospital, and was not able to maintain the unit. The Tenant testified that when walkthroughs of the unit are done by the management, they are done at inconvenient times, such as when his cleaner has not been available, or is scheduled to visit later the same day.

The Landlord testified that the Tenant had asked to store a wheelchair in a basement storage area, and was declined. The Landlord testified that the tenant went ahead and left a soiled, foul-smelling wheelchair in an open storage locker. An email on the subject, from the building manager to the Landlord, dated February 22, 2022 is submitted as evidence.

The Tenant testified that he put the wheelchair in storage when he was trying to recover and use his walker instead. The Tenant testified that he temporarily put the wheelchair in the empty storage locker on a long weekend when he was unable to get assistance to move furniture.

The Landlord testified that on September 14, 2022, the Tenant summoned the building manager to his unit and was drunk and abusive. The building manager testified that the unit was in an unacceptable condition, and that the Tenant was intoxicated, belligerent, and demanded that the building manager look at his ears. The building manager testified that he told the Tenant to seek medical help, and left. The building manager testified this was not the first time the Tenant had sought his assistance for a medical or mental health issue.

The Landlord testified that the Tenant allows his dog to leave the ground-level unit via the window, but the Tenant does not ensure that the dog's feces is picked up. The Landlord testified that twice a week the building manager picks up after the Tenant's dog. The One Month Notice states that the Tenant was given a second warning on

January 29, 2021 about letting his dog out and not picking up after him. Photos were submitted as evidence.

The Tenant testified that the dog feces “could be cleaned up better,” but that the Tenant struggles with walking and is not able to take his wheelchair on the grass, as the ground tends to be wet and therefore is too soft.

The Tenant stated he has been asking the support organization for as much help as possible, and that “there needs to be a little more leniency.”

The Landlord testified that the issues with the Tenant have been long-term, and that management has been trying to work with the him for some time.

Analysis

Based on the parties’ testimony, I find the Landlord served the Tenant the One Month Notice in person on February 22, 2022, in accordance with section 88 of the Act.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Tenant received the Notice on February 22, 2022 and applied to dispute it on the same day, I find the Tenant met the 10-day deadline.

Section 47 of the Act states that a landlord may end a tenancy if a tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord has provided affirmed testimony and documentary evidence that the Tenant’s unit is filthy, smells bad, and contains flies, and that the resulting smell and flies in the hallway have prompted complaints from other tenants; that the Tenant does not ensure someone picks up after his dog, and that as a result, the building manager picks up the dog feces; and that the Tenant left a soiled, foul-smelling wheelchair in an open storage locker in the basement, after being told not to.

The building manager has provided affirmed undisputed testimony that the Tenant summoned him to his unit, was intoxicated, belligerent, and demanded that the building

manager look at his ears, and that this was not the first time the Tenant had sought the building manager's assistance for a medical or mental health issue.

Based on the preceding, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Therefore, in accordance with section 47 of the Act, I find the Landlord is entitled to an order of possession.

In recognition of the Tenant's challenging circumstances, I am granting him additional time to vacate the rental property; the tenancy will end May 31, 2022, at 1:00 p.m.

Conclusion

The Tenant's application is dismissed.

The tenancy will end May 31, 2022, at 1:00 p.m.

The Landlord is granted an order of possession which will be effective May 31, 2022, at 1:00 p.m. The order of possession must be served on the Tenant. The order of possession 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: April 13, 2022

Residential Tenancy Branch