



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management Inc.
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 January 19, 2022 ("One Month Notice").

The first hearing on May 6, 2022, was adjourned early on, because the Tenant's advocate advised that the Tenant was sick to the degree that she had to attend the hospital. After consulting with the Parties about the possibility of either an adjournment or relying on written submissions only, I found a date in my schedule in June to which we could adjourn the hearing. This date was acceptable to both Parties, and they advised me of their availability, should an earlier date arise; therefore, we proceeded with the adjournment route. We did not review any of the Parties' evidence in the initial hearing. The Tenant's advocate, D.D. ("Advocate"), and an agent for the Landlord, O.H., attended the first hearing.

In the reconvened hearing, the Tenant, her Advocate, her case manager, M.T. ("Case Manager"), and an agent for the Landlord, C.G. ("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 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 her Advocate's email address in the Application, and the respective Agents of the Landlord provided their email addresses in each hearing. The Parties 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.

Early in the reconvened hearing, I asked the Tenant some questions to ensure that I have the jurisdiction to consider this matter. The residential property was formerly a hotel, but it is now supportive housing and is not used as a hotel for non-tenants. The Tenant said she has lived there for almost three years, and that she does not have another residence. She uses her own sheets and towels, and she does not pay a different rent amount in the summer. Based on this evidence, I find that I have jurisdiction to hear this matter.

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 latest tenancy agreement began on October 1, 2020, with a monthly rent of \$875.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$187.50, and no pet damage deposit.

The Tenant submitted a copy of the One Month Notice, which was signed and dated January 19, 2022, and which has the rental unit address. The One Month Notice was served by leaving a copy in the mailbox and by attaching a copy to the rental unit door on January 19, 2022, with an effective vacancy date of February 28, 2022. The grounds set out on the One Month Notice for the eviction are as follows:

- the Tenant allowed an unreasonable number of occupants in the unit;
- the Tenant or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - put the Landlord's property at significant risk.

In the "Details of Causes" section of the One Month Notice, the Landlord wrote:

You signed in a guest named [S.] who was left unattended in the building. [S.] was asked to leave, he refused. This resulted in an altercation and ended with the staff getting assaulted by [S.]. You continue to bring in guests when staff ask you not to & break the guest policy.

On Monday, January 17th, 2022 you kicked the management's door repeatedly. When management asked you to stop & proceeded to close the door, you prevented management from closing the door & continued to kick the door.

[reproduced as written]

I advised the Parties that although the Tenant applied for dispute resolution, the burden of proof lies with the Landlord to prove the validity of the One Month Notice. As such, I started by asking the Agent why I should confirm the One Month Notice, rather than cancel it, as the Tenant has requested.

In answer to why did the Landlord serve the One Month Notice, the Agent said:

The incident to my knowledge which caused the eviction was on January 18, 2022. [The Tenant] received a letter. A guest had come to visit [the Tenant] and they are responsible for actions of visitors. He assaulted a staff member with a blow torch, and the police were called. In my report, it says the guest was arrested.

The Advocate said: "[Agent], you're talking about - did the Landlord submit video for January 18 at around 5:57 p.m.? [the Agent said yes] If you view the evidence, you'll see the person who pushes through the staff from outside to inside. Is that the person who allegedly assaulted a staff member? [Agent said yes] He just comes in when the staff member opens the door, she doesn't let him in. He was not a guest. He had come there to visit her, but was not yet visiting." The Advocate continued:

In essence our position is that he was not a guest of the Tenant, and therefore, not her responsibility. Some individual carrying a bag pushes past the pizza delivery man, but there's no video showing him assaulting anyone with a blow torch. That person gets pushed to the ground and there is a struggle with the individual who entered on the losing end. [The Tenant] isn't responsible for this person's activities in this set of events.

I asked the Tenant if this person was there to visit her, and she said:

He was there to pick up his wife. We advised the staff that he was coming to pick her up. He pushed past to get her to the appointment.

The Tenant's Case Manager said: "The wife of this man was upstairs visiting [the Tenant's] partner, but he was not a guest of [the Tenant]."

The Agent's response to these comments was: "No comments, as I was not a witness to the incident; I'm just going off the letter and report."

I asked the Agent if the Landlord had other grounds for evicting the Tenant, and she said the following:

Yes, a brief letter of April 4, 2022, where a staff went upstairs for a health and wellness check of another tenant and [the Tenant] had pushed a staff member. She did not receive medical treatment, but it had an effect on her psychologically.

The Agent referred me to video footage and breach letter that the Tenant had received about this incident. The description with the video states:

This assault took place on Monday, April 4th at 5:45 am on a staff member [C.]. [The Tenant] wanted her door open, staff were dealing with an emergency at her neighbors and [the Tenant] was angry, pushed staff.

The Advocate said: "My main comment is that this is post-Notice conduct, and not relevant to this hearing. We're not prepared to deal with it today."

The Agent then spoke of a breach letter she said the Tenant received, dated September 22, 2021. She said this breach letter was submitted into evidence. The Agent said that it relates to a report indicating that the Tenant had vandalized a water pipe that caused a flood, which damaged other units and the hallway. The Agent said that the Tenant was

observed entering shortly before the flooding, and leaving shortly before the flooding.

The Advocate said:

There is no video of this, and no issue of flooding was brought up at all [in the One Month Notice]. Just the guest issue, and allegations of a guest policy, and kicking a manager's door.

The Agent said that she has quite a few breach letters, but she acknowledged that they happened after the One Month Notice was issued, so therefore, they could not form part of the cause of the One Month Notice.

I asked about the incident of the Tenant having allegedly kicked a manager's door, and the Agent referred me to a breach letter. She said:

It mentions that [the Tenant] was speaking with a manager and became quite elevated. She was asked to come back when she calmed down, and the manager closed the door. [The Tenant] was repeatedly kicking the door and yelling at the manager. This incident occurred on January 17th, and the breach letter was dated January 18th.

The Advocate responded:

Two comments. A breach letter. Let's ask the Tenant to explain in her words what happened. I'm presuming [the Agent] didn't see the event. [she said she did not]

Video D06 – nothing indicates she is screaming and kicking a door. There is no clear footage of her screaming and kicking. She does appear elevated, but not to the point of ending a tenancy.

I asked the Tenant to explain what happened on this day, and she said:

I went home and someone had entered my room and put some fans, and my girlfriend was sleeping, She almost died, because the fans were flowing bad air. So, I went to the mezzanine and asked who entered my room without my consent. Why wasn't I notified? My girlfriend is really sick. There's black mould and stuff, and the girl had really bad asthma and breathing problems. I had to go around and find her puffer.

I needed someone to explain, so I banged on the door and said: 'Hello, managers, talk to me', and no one came out and tried to talk to me. If I ever find out who put the fans in there.

The Advocate said:

. . .is the restoration company that [the Landlord] was using. Someone from the restoration company went in to the room. The manager let them in.

The Agent replied:

So, I do understand that the fans are very hot and make it humid and hard to breath, but we have the right to enter the unit under emergency circumstances. We need to install those machines when there is flood damage. They are to prevent mould from the unit.

I asked the Agent if the Tenant had been given notice of this entry to the rental unit, and she said:

I'm assuming she was not, but we have the right to enter without notice for emergency purposes. But maintenance we do need to provide notices. But this was a flood, so we are permitted. This was a different flood . . .

The Advocate said:

I think we could get into the finer points of notice, but it is not relevant in this case. She was concerned about her girlfriend, and was in an elevated state, but it wouldn't rise to cause the end to the tenancy.

The Agent said that she was just clarifying the reason why they entered. She added:

On March 9, 2021, a breach letter mentions that [the Tenant] had punched the plexiglass, and had hit a staff member and yelled at staff, and security had to intervene.

The Advocate said:

Namely, that is almost a year prior to the Notice and it is not listed as a ground under the Notice, so the things that we had to prepare for did not include this

incident. They would have given the Notice at that time

The Agent mentioned that the Tenant had breached the guest policy on November 17, 2021, by “sneaking in guests without signing them in. I believe it was just the incident with the blow torch and kicking the door.”

The Advocate said that multiple infractions of the guest policy are addressed in her more substantial legal arguments. Whereas, the Agent said that on April 17, the Tenant tried to bring in guests without identification. The Agent said this report: “...mentions that [the Tenant] had slammed the front door and damaged the front door. It is unclear whether this is a breach of the guest policy or property damage.” The Advocate suggested that we would limit it to the reason that was repeated in nature from the grounds set out on the One Month Notice. She said: “Damage to the front door is not part of those grounds.”

The Advocate asserted that allegations regarding the Tenant’s alleged breach of the guest policy it is an area of settled law. She said: “Landlords can’t have these blanket guest policies”, and she cited ***Atira v Richardson*** 2015 BCSC 751, and said, “It is especially salient that a tenant should not be evicted on a case they lost – blanket restriction on guests.” The Advocate also cited: ***PHS Community Services Society v Swait*** 2018 BCSC 824.

The Advocate noted that these cases are the Court’s criticism of landlord policies that limit tenants’ rights under the Act, specifically in this case, those under section 30 of the Act, which states: “(1) A landlord must not unreasonably restrict access to residential property by (b) a person permitted on the residential property by that tenant.”

The Advocate said:

The fact that [the Tenant] is violating a guest policy, she admits. This is not a reason to end her tenancy. Landlords can’t have these blanket guest policies, so the requirement to sign in a guest, and have ID is not a ground to end a tenancy for an illegal restriction.

The Agent said: “I do have three additional incidents in regard to aggression. One occurred on January 24th at night, where she had thrown an object at the front desk plexiglass.”

The Advocate said:

Again, basically, this is post-Notice conduct. Aggression is a very broad term, and almost any action could fall under that. They're relying on breach letters and not affirmed testimony. In referencing these breaches, the Landlords have fallen short of their onus.

I offered the Parties a chance to make any last statements before ending the hearing. As the burden is on the Landlord, the Agent went first, saying: "We went through all the relevant evidence, so that's fine."

The Advocate said:

In brief, eviction should be a last resort; the burden should be very high. Protecting someone's home – having a home – [the Tenant] has moved from homelessness to this housing approximately three years ago.

The incident with the 'guest' was a person who barges in. The video evidence contradicts that any damage was done. Without any affirmed testimony with these breach letters, I would urge not considering them. The video evidence is more relevant. The Landlord has failed to meet their burden for the Notice given in January.

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 a 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:

. . .

- (c) there are an unreasonable number of occupants in a rental unit;
- (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 first alleged that the Tenant had allowed an unreasonable number of occupants in the unit. However, the Agent did not specifically address the number of guests that the Tenant has had in the rental unit; rather, that the Tenant had signed in one guest in particular, but had left him unattended in the building. In the Details of Causes section of the One Month Notice, the Landlord wrote that this guest had been asked to leave, but he refused, which resulted in an altercation that ended with a staff member being assaulted. However, the Landlord did not direct me to evidence of the assault, but rather, of a man who pushed past a staff member and a pizza delivery person at the front door. Later in that video, this man was involved in an altercation on the stairway with another unidentified person, but it appeared that the Tenant's friend took the brunt of the assault in that altercation before exiting.

Another assertion in the Details section of the One Month Notice was that the Tenant had repeatedly kicked the door of a management office when the staff would not let her in. However, the video purported to evidence this exchange showed the Tenant criss-crossing the lobby area in what looked to be an elevated state. However, there is no evidence of her kicking any doors or yelling at anyone, and as such, I find that this claim is not supported by the video evidence presented to me.

I find that the cases cited by the Advocate establish that a Landlord cannot use blanket guest policies to restrict a tenant's rights to have guests, which are legislatively

authorized pursuant to section 30 of the Act.

I note paragraph 55 of *PHS* cites *Atira*, as follows:

[55] Furthermore, the statute is clearly aimed at conferring a benefits on tenants; without legislation such benefits would not exist: *Atira Property Management Inc. v. Richardson*, 2015 BCSC 751 at para. 26, citing *Berry* at para. 11. The Act makes it clear that there are certain standard terms from which no tenancy agreement can depart, and parties cannot contract out of the Act (s. 5). ...

Contrary to the Courts' findings in these cases, I find that the Landlord is once again attempting to restrict tenants' rights under the Act to have guests in their rental unit. When I consider the evidence presented to me, overall, I find on a balance of probabilities that the Landlord has not provided sufficient evidence to meet their burden of proof and to support the grounds set out in the One Month Notice.

Accordingly, I cancel the One Month Notice; it is void and unenforceable. The Tenant is successful in her Application, as the eviction notice is overturned.

Conclusion

The Tenant is successful in her Application to cancel the One Month Notice. The One Month Notice is cancelled, as the Landlord failed to provide sufficient evidence to meet their burden of proof on a balance of probabilities.

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: June 22, 2022

Residential Tenancy Branch