



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 579694 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On March 16, 2022, 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”).

The Tenant attended the hearing, with N.G. attending as an advocate for the Tenant. R.S. and G.S. attended the hearing as agents for the Landlord. 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. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package and some evidence by hand on or around March 23, 2022, and R.S. acknowledged that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Notice of Hearing package and some evidence.

Moreover, N.G. advised that additional documentary evidence was served to the Landlord by hand on June 16 and June 20, 2022. R.S. confirmed that this evidence was received as well. Based on this undisputed testimony, I have accepted this evidence and will consider it when rendering this Decision.

R.S. advised that the Landlord's evidence was served to N.G., on their behalf, by ServiceBC. She was informed that this is not a service that is provided; however, she insisted that this was done for her. N.G. advised that no emails were ever received; however, she did receive the Landlord's evidence by registered mail on June 15, 2022. Based on this testimony, I have accepted this evidence and will consider it when rendering this Decision.

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 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.

R.S. did not know when the tenancy started, but it appeared to commence on November 1, 2005, according to the Tenant. Rent is currently established at \$481.00 per month and is due on the first day of each month. The Tenant stated that he paid a security deposit of \$175.00. A copy of the written tenancy agreement was not submitted as documentary evidence.

R.S. advised that the Notice was served to the Tenant by hand on March 8, 2022, and the Tenant clearly received this as it was disputed within the 10-day legislated timeframe to do so. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant." The effective end date of the tenancy was noted on the Notice as April 30, 2022.

As per the details of dispute on the Notice, she advised that on February 9, 2022, the Tenant informed the Landlord that a person was attempting to break into the rental unit. As well, she submitted that he stated that he had called the police three times about this incident, but the police told him to stop calling. The Landlord noted that a rifle was observed in the rental unit and that the police were called, but when the police arrived, they informed the Landlord that they had attended the rental unit three times that morning and found nothing.

The Landlord indicated on the Notice that the Tenant was warned not to call the police again, but the Tenant later appeared at the Landlord's door in a delirious condition, stating that masked men had returned. The Landlord investigated and found no evidence of this. At this point, the Tenant stated that he had a loaded gun on the couch and was fearful of burglars inside. The Landlord called the police, who then took the Tenant to the hospital. It noted that the police confiscated the Tenant's rifle and hunting knives. As well, it was noted on the Notice that the Tenant called the Landlord from the hospital to ask the Landlord to retrieve belongings from the rental unit. Furthermore, the Tenant stated that there "will be some white stuff on the coffee table and that his friends were visiting the evening before and were doing Meth."

R.S. advised that they attempted to obtain information from the police about this incident, but were unable to because they could not get approval from the Tenant to release this information. They did receive some documents from the police, but they were heavily redacted. She testified that the Tenant asked them to go into the rental unit to get his computer because he was fearful that someone "will rob [him] blind". As well, she stated that when they entered the rental unit, they discovered a "white substance" on the coffee table, which they put into a bag and took home. She advised that the Tenant was hallucinating that day. She stated that the illegal activity reason on the Notice was checked off because the Tenant had a loaded gun in the rental unit, and that methamphetamines were present; however, they had no documentary evidence to support these allegations.

G.S. questioned the witness statements submitted as documentary evidence, and wondered why one of the witnesses would ask the police if there were any drugs involved in this incident. As well, regarding the other statement, he noted that this statement confirms that the Tenant possesses firearms. He referenced a letter from a resident, submitted as documentary evidence, who witnessed the Tenant being taken away from the rental unit by the police. As well, he noted that one resident moved based on the Tenant's actions. Finally, he advised that another letter, submitted as documentary evidence, implies that that Tenant is responsible for the drug use in the rental unit. Regarding the bag containing the white substance that was recovered from the rental unit, he stated that they have done nothing with this material as of yet.

N.G. advised that the Tenant was not arrested and that no charges have been laid against him. He was taken away to the hospital because he was suffering from hallucinations. She confirmed that he called the police three times because he was concerned for his security. She stated that even if the Tenant's actions were in violation of the law, it was not significant enough to justify service of the Notice. She submitted that the Landlord attempted to end the tenancy by way of a mutual agreement, but when the Tenant refused, the Notice was then served.

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.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a 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:

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

Regarding the validity of the reason indicated on the Notice, the onus is on the party issuing the Notice to substantiate the reason for service of the Notice. With respect to the reason on the Notice, there is no dispute that the Tenant had been hallucinating on February 9, 2022, nor is there a dispute of the circumstances of the incident that day that led to the Tenant being detained and taken to the hospital. However, the reason the Landlord checked off on the Notice was due to the Tenant engaging in illegal activity. While R.S. and G.S. advised that it was their belief that the Tenant had a firearm in the rental unit and that he was using methamphetamine, I do not find that they have provided sufficient documentary evidence to corroborate what illegal activity the Tenant was actually engaging in.

Given that they had recovered a “white substance” from the rental unit, I presume that they did this because they assumed it was some form of narcotic. If this was the case, it is not clear to me why they would simply elect to keep this in their home, approximately five months later, without doing anything with it. If they truly believed that the Tenant was conducting illegal activities in the rental unit, it would be reasonable to conclude that they would attempt to take at least some steps to prove that the Tenant was engaging in some kind of illegal activity in the rental unit.

I acknowledge that the Tenant’s behaviours on that day were likely troubling, unnerving, and unsettling; however, I am not satisfied that R.S. or G.S. have submitted substantial or compelling evidence of what illegal activity the Tenant had engaged in. As such, I do not find that the Landlord has sufficiently substantiated the ground for ending the tenancy for this reason.

As a note, it is possible that any of the aforementioned incidents caused by the Tenant are actions or behaviours that could give rise to the Landlord serving a One Month Notice to End Tenancy for Cause for a different reason on the Notice. The Tenant is on formal notice that this pattern of demonstrated behaviour is unacceptable, inappropriate, and may have jeopardized his tenancy.

Regardless, as I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy under the reason that the Tenant engaged in “illegal activity”, I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is cancelled and of no force or effect.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of March 8, 2022 to be cancelled and of no force or effect.

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: July 5, 2022

Residential Tenancy Branch