



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peter Wall Mansion & Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, MNDCT, RR, PSF, LRE, OLC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 9:30 a.m. and ended at 10:20 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlords attended the hearing, represented by resident managers, MH and CH ("landlords"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords acknowledged receipt of the tenant's Notice of Dispute Resolution Proceedings package and stated they had no issues with timely service of documents. The landlords testified they personally served the tenant with their evidence package on July 6, 2022.

Preliminary Issue – portions of the tenant's application dismissed

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

Rule 6.6 states that 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.

The tenant did not attend the hearing which was scheduled by conference call at 9:30 a.m. As he did not attend, he did not present evidence regarding the merits of his claim for me to consider, or satisfy me that on a balance of probabilities, the facts occurred as claimed. Consequently, I dismiss (without leave to reapply) all the issues sought in the tenant's application for dispute resolution with the exception of the tenant's application to cancel the landlord's notice to end tenancy for cause. The landlord is still required to prove the reasons for ending the tenancy pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, even though the tenant did not attend the hearing.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be upheld or cancelled?

Background and Evidence

The landlord gave the following undisputed evidence. A tenancy for this rental unit commenced some time ago with a different set of tenants who assigned their tenancy to a second set of tenants who in turn assigned their tenancy to this set of tenants. The landlord testified that the sub-tenancies were approved of by the landlord and recognizes RR and YT as the tenants of this rental unit. The landlord testified that YT never signed the tenancy agreement and has never occupied the unit, to his knowledge.

On March 17, 2022, the landlord personally served the tenant R.R. with a 1 Month Notice to End Tenancy for Cause. The tenant provided a copy of it as evidence for this dispute resolution hearing. On the notice, the landlord provides 2 reasons for ending the tenancy:

- *the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *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 or the landlord;*

Under “details of cause”, the landlord wrote the following:

1. April 2021 – present trafficking drugs in and around [address] – video to be provided.
2. Making lewd, sexual gesture in video directed to female manager
3. Swearing and being abusive to female manager when asked about spilling coffee in elevator on Jan 20, 2022.
4. Nov 16, 2021 – 2 incidents of mail being destroyed by tenant [tenant’s name] that was not his mail. Video evidence. This is currently being investigated by Canada Post.
5. Nov 16, 2021 provide entry to burglar who assaulted manager.

Each of the 5 incidents was described by the landlord during testimony.

1. April 2021 – present trafficking drugs in and around [address] – video to be provided.

There are video surveillance cameras throughout the building and the camera caught images of the tenant and another unknown person appear to exchange something by hand at 5:20 a.m. on April 20, 2021. The landlord was unable to upload the large video file of the incident, so the landlord supplied screenshots and gave a detailed description of the interaction between the tenant and the suspected “client”. The landlord testified that the residents of the building complain to him daily about this tenant’s trafficking of drugs in and around the building.

In his written statement, the landlord provided multiple other instances of suspected drug trafficking instances caught on camera and described in detail. As these instances

were not brought to the tenant's attention in the notice to end tenancy, I asked the landlord to focus his testimony on those that were.

2. Making lewd, sexual gesture in video directed to female manager

On April 16, 2021, the tenant was recorded grabbing his crotch, jerking it up and down while looking at the camera. When asked about his behaviour, the tenant told the landlord that the gesture is his way of telling the landlord to "F-off".

3. Making lewd, sexual gesture in video directed to female manager

On January 20, 2022, the landlord received a text from a resident advising that someone had spilled coffee in the elevator. The landlord reviewed the surveillance videos and determined it was the tenant. While cleaning it up, the female manager asked the tenant to clean up his own spills in the future and the tenant screamed at the female manager telling her it's her "F'ing" job and she is the "F-ing cleaner".

4. Nov 16, 2021 – 2 incidents of mail being destroyed by tenant [tenant's name] that was not his mail. Video evidence. This is currently being investigated by Canada Post.

The landlord states the date is incorrect. The incident took place on February 24, 2022. The tenant was seen on video tearing open an envelope, throwing it in the lobby trash can. The landlord retrieved the mail, noticed it was addressed to someone living a block away. The same day, the tenant is seen on video going to his mail, retrieving one which he tears open and throws into the trash. This was also retrieved and determined to a document from Canada Revenue addressed to a previous tenant. The landlord alleges that this is against the law and there is currently an active investigation underway for mail theft.

5. Nov 16, 2021 provide entry to burglar who assaulted manager.

On video, the tenant is seen exiting the stairwell at 3:48 a.m., makes his way to the exit and speaks to two non-residents outside. The tenant either allows the two non-residents in or fails to secure the entrance to the building once he leaves and the two non-residents enter the building. While there, the female is seen trying to open parcel lockers. The male is seen trying to force the lock on the office door with a vice grip tool. Security staff observe the incident, call 911 and the building manager (landlord) who confronts the two non-residents. While trying to escape, the male strikes the landlord repeatedly with the vice grips and the two people let into the building by the tenant are arrested some time later. The landlord provided photos of his injuries as evidence.

Analysis

I find the tenant was duly served with the 1 Month Notice to End Tenancy for Cause on March 17, 2022 in accordance with sections 88 and 90 of the Act. The tenant filed his application to dispute the notice on March 26, 2022, within the 10 days as required under section 47.

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. 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 any of the reasons identified in the Notice.

The tenant did not attend this hearing to dispute any of the evidence presented by the landlord or dispute any of the landlord's testimony. The Residential Tenancy Branch Rules of Procedure state:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In *M.B.B v. Affordable Housing Charitable Association*, 2018 BCSC 2418, the court found that the landlord must meet their onus of showing the notice to end tenancy meets the statutory requirements to end the tenancy, even when the tenant fails to attend the hearing to dispute the notice to end tenancy.

The landlord claimed the reasons for ending the tenancy are:

- *the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *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 or the landlord;*

Residential Tenancy Branch Policy Guideline PG-32 [Illegal Activities] states:

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

...

The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities.

Based on the undisputed evidence supplied by the landlord and the testimony provided, I find it more likely than not that 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 or the landlord. I make this finding based on the description of the drug trafficking instances, corroborated by screen shots of the interactions provided for this hearing by the landlord. I also base my determination on the multiple instances of suspected drug trafficking documented in the landlord's written statement which describes several occurrences throughout the tenancy.

As the tenant did not attend this hearing to dispute any of the allegations made against him, I accept the validity of the landlord's testimony that the residents of the building have voiced their concerns to him about their safety regarding the tenant trafficking drugs on residential property or vicinity.

Further, PG-32 states:

If a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity. The tenant may be found responsible for the illegal activity whether or not the tenant was actually present when the activity occurred, so long as it was in the rental unit or on the residential property.

I find that the two non-residents who were arrested for assaulting the landlord are persons permitted on the property by the tenant. Based on the landlord's undisputed testimony and evidence provided, I accept that the tenant spoke with these people who he doesn't recognize as residents before allowing them access to the secure key-fobbed building without a fob. Given that the tenant allowed the access to the non-residents at 3:48 a.m., I am of the opinion that the tenant ought to have known or at least suspected that the non-residents may have criminal intent when accessing the building. The persons committed an assault, upon the landlord, which is an illegal activity under the Criminal Code.

Based on the foregoing, I find the landlord has proven the reasons for ending the tenancy under section 47(1)(e)(ii) are valid and I uphold the notice to end tenancy for cause. As such, I will not analyze in this decision whether the landlord has satisfied the grounds under section 47(1)(d)(i). I have reviewed the notice to end tenancy and I find it complies with form and content provisions of section 52 of the Act. The effective date stated in the notice to end tenancy has passed. As such, I grant the landlord an Order of Possession effective 2 days after service upon the tenant.

Conclusion

The landlord's notice to end tenancy is upheld. The landlord is granted an Order of Possession effective 2 days after service upon the tenant.

The remainder of the tenant's application for dispute resolution are dismissed without leave to reapply.

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 15, 2022