



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing was reconvened by way of conference call in response to an application for dispute resolution ("Application") filed by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") to seek an order cancelling a One Month Notice to End Tenancy for Cause dated January 19, 2022 ("1 Month Notice") pursuant to section 47 of the Act.

The original hearing of the Application was held on May 2, 2022 ("Original Hearing"). There was insufficient time to take all the Tenant's testimony and allow rebuttals at the Original Hearing. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing and issued a decision dated May 6, 2022 ("Interim Decision"). The Interim Decision stated the Landlord was permitted to re-serve its evidence on the Tenant that had already been submitted to the Residential Tenancy Branch ("RTB") prior to the Original Hearing. The Tenant was not permitted to serve any additional evidence. The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing ("Adjourned NDRP"), scheduled for June 13, 2022 at 9:30 am, were served on the parties by the RTB.

Two agents ("OH" and "AN") for the Landlord, the Tenant and the Tenant's advocate ("KB") attended the Original Hearing and they were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant and KB did not attend this reconvened hearing. I left the teleconference hearing connection open until 9:46 am in order to enable the Tenant and KB to call into this teleconference hearing scheduled for 9:30 am. OH attended the reconvened hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Adjourned NDRP. I also confirmed from the

teleconference system that OH and I were the only ones who had called into this teleconference.

At the Original Hearing, the Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence ("NDRP Package") on the Landlord by registered mail on February 11, 2022. The Tenant submitted a copy of the Canada Post receipt and tracking stub for the service of the NDRP Package on the Landlord. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Service of Landlord's Evidence on Tenant

At the Original Hearing, OH stated the Landlord served its evidence on the Tenant's door. The Tenant disputed she was served with the Landlord's evidence on her door. OH did not provide any evidence or testimony to corroborate her statement that the Landlord's evidence was served on the Tenant's door. As such, I found the Landlord's evidence was inadmissible for the Original Hearing. Although I directed the Landlord to re-serve the Tenant with its evidence, the Landlord did not provide any proof of service that its evidence was served on the Tenant at least seven days prior to the reconvened hearing. As such, I find the Landlord's evidence is inadmissible for this reconvened hearing.

Issues to be Decided

Is the Tenant entitled to:

- an order cancelling the 1 Month Notice?
- if the Tenant is not entitled to cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the Application and my findings are set out below.

OH stated the tenancy commenced on October 1, 2020 for the first rental unit the Tenant resided in. However, due to a flood in that unit, the Tenant was relocated to a different rental unit on December 10, 2021. The Tenant is required to pay rent of \$375.00 on the 1st day of each month. OH stated the Tenant paid a security deposit of \$187.50 at the commencement of the tenancy and the Landlord is currently holding the

deposit in trust for the Tenant. Although the Tenant stated the tenancy commenced on April 1, 2020, the discrepancy between the Landlord's and Tenant's testimony on this point is not relevant to the issues I must decide.

The Landlord stated the 1 Month Notice was served on the Tenant's door on January 19, 2022. The 1 Month Notice state the causes for ending the tenancy were:

- Tenant has allowed an unreasonable number of occupants in the unit
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of the causes stated in the 1 Month Notice were:

Incident happened on Jan 18th 22, on the main floor leading up to stairs @ approximately 18:00. [First Name of Person (hereinafter "AB")] (one of the guests you have been letting stay in your room) pushed a staff member as proceeded to use your key card to enter the stairwell. [AB] was asked to leave, he refused. He entered into a conflict with a staff, which resulted in the staff getting assaulted. The Vancouver Police Department was called immediately and they arrived at the scene. You repeatedly break the guest policy.

OH stated that, pursuant to the rental Guidelines, the Landlord does not permit guests to go upstairs, where the rental units are located, because there are a lot of vulnerable people who live in the residential property. As a result, the Landlord's staff stops everyone that enters the building and require them to show identification to check-in and then go upstairs with the tenant they are visiting. OH stated the Tenant was staying with her partner in a different rental unit located in the residential property. OH stated the Tenant has been renting out her rental unit to various people. OH stated that, most recently, the Tenant has sublet her rental unit to AB and AB then brought in another guest to stay in the Tenant's rental unit. OH stated the Tenant gave her key card to AB which gave him access to the stairway upstairs that leads to the rental units located in the residential property.

OH stated that on January 18,, 2022, AB was seen coming into the residential property and an employee of the Landlord ("TA") attempted to stop him from accessing the upper floor because the Tenant did not sign AB in as a guest. OH stated TA confronted AB and requested that AB give him the key card. OH stated AB refused and there was then an altercation and AB burned TA with a small blowtorch style lighter. OH stated the Vancouver Police were called. OH stated that the police took a statement from AB and

he stated the Tenant was renting her rental unit to him. OH stated the police offered to take TA to the hospital for treatment of the burn. OH stated the Landlord subsequently removed the access key card reader from the stairwell and all guests must now be buzzed into the building by a staff member.

The Tenant stated she was not subletting the rental unit to AB. The Tenant stated AB was helping care for a friend who lived in the residential property on January 18, 2022. The Tenant stated she spoke to a staff member to give permission for AB to enter the building as he needed to go to leave and return to the residential property. The Tenant stated it was TA who prevented AB from accessing the stairway even though she had already given her permission for AB to enter the residential premises.

Analysis

Subsections 47(1)(c), 47(1)(d)(i) and 47(4) of the Act state in part:

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,

[...]

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

[emphasis in italics added]

OH stated the 1 Month Notice was served on the Tenant's door on January 19, 2022. I find the 1 Month Notice was deemed to have been served on the Tenants on January 22, 2022. Pursuant to section 47(4), the Tenant had 10 days after she received the 1 Month Notice, being March 1, 2022, within which to make the Application. The records of the RTB disclose the Tenant made the Application on January 31, 2022. As such, the Tenant made the Application within the 10-day dispute period.

OH stated the Tenant gave AB her key card that allowed entry into the stairway leading upstairs to the Tenant's rental unit that the Tenant was renting to AB. OH stated on January 18, 2022, AB was spotted entering the building through the stairwell. OH stated TA attempted to stop AB from accessing the stairwell and TA requested AB surrender the key card as no permission was given by the Tenant for AB to access the residential property. OH stated an altercation occurred between AB and TA in which AB used a small torch lighter to burn TA. OH stated the police were called and attended at the residential property. OH stated the police took a statement from AB and offered to take TA to the hospital for treatment.

The Tenant stated AB needed to leave the residential property and then return. The Tenant stated she gave her permission to a staff member of the Landlord to access the residential property as he was providing care to another tenant who lives in the residential property. The Tenant stated that it was TA that prevented AB from proceeding upstairs even though she had already given permission for AB to enter the premises.

I find OH's testimony to be credible and convincing. I find that, by the Tenant's own admission, AB was her guest. As such, the Tenant was responsible for the actions of AB. Regardless of whether the Tenant gave consent to a staff member of the Landlord to allow AB to re-enter the building, there was no reason for AB not to cooperate with the Landlord's staff and to seek a non-violent resolution of the conflict. Instead, AB used his blow-torch style lighter as a weapon on TA. AB's conduct resulted in injury to TA. As such, I find AB significantly interfered with an employee of the Landlord on the residential property.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, cause for ending the tenancy pursuant to subsection 47(1)(d)(i). Based on the foregoing, I dismiss the Application without leave to reapply.

As I have found cause under subsection 47(1)(d)(i), it is unnecessary for me to consider whether there is cause to end the tenancy under subsection 47(1)(c) of the Act.

Section 55(1) of the Act states:

Order of possession for the landlord

- 55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. At the reconvened hearing, OH stated the Tenant has not vacated the rental unit. As such, pursuant to section 55(1) of the Act, I must grant the Landlord an Order of Possession of the rental unit. Pursuant to section 68(2)(a), I find the tenancy ended on June 13, 2022.

Conclusion

The Application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order by the Landlord. This Order of Possession may be filed in the Supreme Court of British Columbia and 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: July 3, 2022

Residential Tenancy Branch