



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, a staff member of the landlord, the tenant, and three advocates for the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called witness W.M.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the tenant served the landlord with the tenant's application for dispute resolution via registered mail sometime in April of 2022; however, neither party

could recall the date of service. I find that the landlord was served in accordance with section 89 of the *Act*.

Advocate A.M. testified that the landlord was personally served with the tenant's evidence on July 7 or 8, 2022. The landlord confirmed receipt on July 7 or 8, 2022. I find that the landlord was served in accordance with section 88 of the *Act*.

The landlord testified that landlord's evidence was served on the tenant via registered mail on July 8, 2022. Advocate A.M. testified that the tenant received the landlord's evidence on July 9, 2022. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2019 and is currently ongoing. Monthly rent in the amount of \$935.00 is payable on the first day of each month. A security deposit of \$467.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant was personally served with a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated March 30, 2022 on March 30, 2022. The One Month Notice was entered into evidence and states the following reasons for ending the tenancy:

- 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;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the One Month Notice was served on the tenant because of an incident on March 23, 2022 and inappropriate communications between March 22 and March 24, 2022. In the details of cause section of the One Month Notice, a breach letter of March 11, 2022 is mentioned; however, the landlord and staff member did not provide testimony on any issues that occurred pre March 22, 2022 and did not present the March 11, 2022 letter.

The staff member of the landlord testified that on the morning of March 22, 2022 the tenant telephone her and started yelling and screaming at her and calling her a bitch. The staff member testified that she felt threatened and hung up the phone.

The staff member testified that on March 22, 2022 she was requested to grant access to the tenant's unit to allow paramedics entry because the tenant was too intoxicated to let them in.

The staff member testified that on March 23, 2022 the tenant came to her office and threw his hospital name tag on her desk. The tenant then informed her that he was at the hospital and started yelling profanities at the staff member and was aggressive in his speech. The staff member testified that the tenant was intoxicated and that she did not feel safe. The staff member testified that she then closed the door to her office but she could still hear the tenant yelling on the other side of the door.

The staff member testified that she felt her safety was in danger and called the police. The staff member testified that a constable attended and spoke to the tenant. The staff member testified that the tenant was verbally aggressive with the constable and that the constable recommended the staff member start eviction proceedings.

The staff member testified that on March 23, 2022 between 1:30 p.m. and 4:00 p.m. the tenant called the staff member and harassed her on the phone and left threatening messages on the answering machine. Five messages were entered into evidence, four

from March 23, 2022 and one from March 24, 2022. Below is a transcript of the five messages:

1. It's [tenant]. I want the name and the phone number I can contact this person who invaded my place, so called [name of landlord organization]. So give me the name and give me the phone number and leave it on my message, NOW!
2. Ya it's 1:13 now [staff member]. Ah, we could get the lady's name and her phone number at, because my legal team would like to take it up with her, ya. GOT IT! GET IT! BEAT IT! DO IT!
3. Hi [staff member] it's [tenant], ya, completely sober, ya. It's going on for ah two o'clock. I want the name of the bitch that was up here and the [landlord] number. Thank You. GET IT! DO IT AND DO IT NOW!
4. Hi [staff member], it's [tenant], yes. Oh I had three people up here uh talking to me about, oh for god's sake woman, give it a break! And get the god damn bitch name and number on the [landlord]. FUCK YOU!
5. Oh, hi [staff member], it's [tenant]. Ya, oh I was so impressed with the three constables who came to the door here, oh man. I was just telling [R.] about it. Oh, very impressive. I'll tell you something, uh, you see, uh, I have a legal team too. And you want to fucking gotta impress me, don't bother doing it with that bitch. Got that BITCH. Ya, you're just a lucky. Look it up.

The staff member testified that due to the above-described confrontation and messages from the tenant, she was afraid for her life and had to leave the door to her office closed for security.

The landlord entered into evidence a letter to the tenant dated March 29, 2022 with a notation on the top right corner that the letter was hand delivered to the tenant on March 30, 2022. In the letter the landlord reviews the March 22-24 2022 issues with the tenant and states that due to the tenant's breach of the tenancy agreement and the *Act*, the tenant is being evicted and the landlord is issuing the tenant with the One Month Notice.

Tenant advocate Z.L. ("Z.L.") submitted that the landlord has not proved the three grounds to end tenancy set out in the One Month Notice. Z.L. testified that the tenant did not significantly interfere with or unreasonably disturbed another occupant or the landlord. Z.L. submitted that the tenant did not threaten the staff member in question and had no intention of harm.

Z.L. submitted that the tenant has had a hard life and uses rude swear words but did not threaten the health or safety of anyone. Z.L. submitted that even if the tenant breached the tenancy agreement, Act or regulation, the landlord did not provide the tenant with an opportunity to correct the behaviour.

Z.L. submitted that the tenant's rude behaviour did not reach the threshold for eviction.

Tenant advocate R.M. ("R.M.") testified that she is the tenant's counsellor employed by the local health authority. R.M. testified that the tenant is a widower in his 70's and that in March of 2022 the tenant was dealing with the loss of his wife which was compounded by isolation caused by COVID 19. R.M. testified that the tenant leaned on alcohol to deal with the above issues which led to the March 22-24 outbursts. R.M. testified that the tenant lived at the subject rental property for the past four years and has never before had an outburst like what occurred in March 2022, and that outburst was a side effect of intoxication which the tenant is now seeking help for.

R.M. testified that in March of 2022 the tenant lacked the supports he needed to deal with his addiction and that those supports are now in place and the tenant has stopped drinking. R.M. testified that the tenant is now supported by a medical team and that he is making progress and deserves the opportunity to maintain his sobriety. R.M. testified that if the tenant loses his housing, the tenant will lose the supports that are now in place to help the tenant. R.M. testified that the tenant regrets his actions.

Tenant advocate A.M. ("A.M.") testified that she is an outreach worker employed by the subject rental city. A.M. testified that she has worked with the tenant since he lived in a shelter before he moved into the subject rental property. A.M. testified that the tenant weighs approximately 100 pounds and was not a physical threat to anyone.

A.M. testified that during COVID the tenant was really lonely, and his mental health fell apart. A.M. testified that R.M. has done amazing work and that the tenant is a different person now and is very nice and cheerful.

Both parties agree that the tenant has not had any outbursts since the One Month Notice was served.

The landlord testified that the subject rental property is not supportive housing, and the tenant needs more supports than are available at the subject rental property. The landlord testified that the staff member had to call the police, and that this cannot be overlooked.

The landlord testified that the tenant is an excellent person when he is sober. The landlord testified that it's great that the tenant now has wrap around services, but he didn't when he needed it the most. The landlord testified that aggressive/abusive behaviour is not tolerated and that its not acceptable to have a slip like the tenant did in March of 2022.

Analysis

Section 47(1)(d)(i), section 47(1)(d)(ii) and section 47(1)(h) of the *Act* state:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(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,

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

I find that the March 29, 2022 breach letter did not provide the tenant with an opportunity to remedy any of the alleged breaches, as required by section 47(1)(h)(ii) of the *Act* and so the tenant cannot be evicted under section 47(1)(h) of the *Act*.

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) states:

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.

The landlord did not present any evidence or provide any testimony regarding issues occurring before March 22, 2022. I decline to consider evidence that was not presented, in accordance with Rule 7.4 of the *Rules*.

In *Senft v Society For Christian Care of the Elderly*, 2022 BCSC 744 (*Senft v Society For Christian Care of the Elderly*), the honorable Madame Justice Wilkinson stated at paragraphs 38-39 that RTB arbitrators must keep the protective purpose of the RTA in mind when construing the meaning of a provision of the RTA and that post notice conduct is relevant in deciding whether an end to tenancy was justified or necessary in the context of the protective purposes of the RTA.

I find that the tenant’s undisputed outbursts between March 22-24, 2022 were unacceptable and undoubtedly distressing to the landlord’s staff member; however, I find that these isolated outbursts did not rise to the level of a significant interference, an unreasonable disturbance or a serious jeopardization of the health, safety or lawful right or interest of the landlord, warranting eviction.

I find that continued similar outbursts may well be cause for eviction; however, from the evidence of both parties, since the tenant has received mental health and addiction supports, no further disturbances have been reported. Pursuant to *Senft v Society For Christian Care of the Elderly*, I find that the tenant’s post notice conduct and notable lack of outbursts/disturbances since service of the One Month Notice and the introduction of mental health and addiction supports is relevant in deciding not to end this tenancy. I find that as the outbursts have not been ongoing the disruption to the landlord was transient in nature and does not warrant an eviction.

Pursuant to my above findings, I cancel the One Month Notice. This tenancy will continue on in accordance with the *Act*. The tenant is cautioned that future and or ongoing outbursts may be cause for eviction.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled on one occasion to deduct \$100.00 from rent.

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 27, 2022

Residential Tenancy Branch