



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On May 13, 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 H.B. attending as his advocate. P.M. and L.J. 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 the Notice of Hearing package by hand on or around May 27, 2022, and P.M. confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing package.

He also confirmed that he did not submit any documentary evidence for consideration on this file.

P.M. advised that the police served the Tenant with the Landlord's evidence by hand on September 17, 2022. As well, he noted that he did not check to see if the Tenant could

view the Landlord's digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure (the "Rules"). The Tenant confirmed that he received the Landlord's documentary evidence and that he was prepared to respond to it, but he stated that he was not able to view the Landlord's digital evidence. Despite the Landlord's evidence being served late, and not in compliance with the timeframe requirements of Rule 3.15, as the Tenant stated that he was prepared to respond to the Landlord's documentary evidence, I have accepted this evidence and will consider it when rendering this Decision. However, as the Tenant could not view the Landlord's digital evidence, I have excluded this and will not consider it when rendering this Decision. The Landlord was permitted to make submissions regarding the content of the digital evidence.

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*.

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.

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.

All parties agreed that the tenancy started on December 20, 2018, that rent was owed in the amount of \$500.00 per month, and that it was due on the first day of each month. A

security deposit of \$250.00 and a pet damage deposit of \$250.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

P.M. advised that the Notice was served to the Tenant by hand on May 9, 2022. The reason the Landlord served the Notice is because 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 effective end date of the tenancy was noted on the Notice as June 30, 2022.

He advised that the Notice was served to the Tenant because of an incident on May 6, 2022, where the Tenant was drunk in the hallway of the building and exposed himself to a female tenant of the building. He stated that this incident was captured on a security camera, and he described the incident. He testified that the Tenant was fully exposed from the waist down, that he then pulled up his pants, and smiled and waved to the camera. He referenced the signed letter of complaint about this incident from the female tenant who was subjected to this circumstance. As well, he referenced the documentary evidence submitted to support this position.

The Tenant advised that he was sorry for this incident and that he apologised twice to the female tenant. He testified that he was doing his laundry and he wore a size of jeans that was too big for him. He stated that he made a mistake for "not having [his] gear on properly", that there was no intent, that there were no sexual gestures, and that this was simply a "wardrobe malfunction." It is his belief that he did not do anything wrong, other than not wearing a belt.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that the 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:

(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.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence, I have before me a complaint letter from a female tenant of the building and an incident report of an exchange on May 6, 2022, where the Tenant was accused of exposing his genitals to her in the common area hallway of the building. I also have before me solemnly affirmed testimony of P.M. confirming the nature of this incident, as viewed on security camera footage, which apparently demonstrates that this act was clearly intentional in nature.

While the Tenant does not deny that this incident happened, he claimed that it was unintentional, inadvertent, and was due to the wrong choice in pants.

Based on my assessment of the evidence, I am skeptical that this was purely a careless accident that was borne out of a mistaken choice in wardrobe and pure happenstance

that another person was in the vicinity. I do not find the Tenant's testimony to be compelling or credible. Given the evidence before me, I find it more likely than not that this was intentional, and wholly inexcusable behaviour, and I prefer the Landlord's evidence on the whole. As such, I am satisfied, by the Tenant's actions, that the ground for ending the tenancy has been justified.

As the Landlord's Notice is valid, and as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

The effective end date of the tenancy of June 30, 2022, on the One Month Notice to End Tenancy for Cause is changed to the nearest date that complies with the law. Since that effective date has passed, I grant the Order of Possession effective on **September 30, 2022 at 1:00 PM** after service of this Order on the Tenant.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective on **September 30, 2022 at 1:00 PM** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 23, 2022

Residential Tenancy Branch