



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 *Act*.

Tenant N.B. and his advocate D.A. attended the hearing, while the landlord N.B. and O.D. attended the hearing for the landlord. O.D. was assisting the landlord as N.B. is hard of hearing. All parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath. All parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The tenant confirmed receipt of the 1 Month Notice and all parties confirmed receipt of all applicable documents related to the hearing. All parties are found to have been served with all applicable documents in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord’s notice? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on January 1, 2015. Rent is currently \$375.00 and a security deposit \$187.50 was paid at the outset of the hearing and continues to be held in trust by the landlord.

On April 14, 2022, the landlord issued a 1 Month Notice. The reason cited on the notice were listed as follows:

- Tenant or a person permitted on the property by tenant has seriously jeopardized with the health or safety or lawful right of another occupant or the landlord, and;

- Put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

The landlord argued that the tenant had been involved in three incidents within the rental building which caused him to issue the 1 Month Notice. Specifically, the landlord cited fires on April 8, 2021, and April 13, 2022, along with an incident involving another tenant on April 18, 2021. Further, the landlord explained that the parties had signed a 'last chance' agreement on June 8, 2021.

The landlord described both the April 8, 2021, and April 13, 2022, fires as being the result of the tenant's actions. The landlord further described an alleged assault on April 18, 2021 perpetrated by the tenant against his neighbour. As part of their evidentiary package, the landlord included a video of the alleged assault, a ledger from the building's staff describing the April 13, 2022 fire, and a copy of the 'last chance' agreement. The video included in evidence displays a date stamp of April 18, 2021, and is 12 minutes in length. It shows a gentlemen identified by the landlord as tenant N.B. acting in a hostile manner towards his neighbour with a large piece of wood.

The ledger supplied by the building's manager describe the April 13, 2022, fire as requiring three fire extinguishers to suppress it along with a violation notice from the City's fire department. Further evidence includes the last chance agreement dated June 8, 2021, which states amongst other things:

N [tenant] will sincerely apologize to his neighbour in #209 for punching him in the head repeatedly and breaking his arm on April 18

N [tenant] will be very careful not to cause another fire like he did on April 8, 2021. On April 8, the manager had to put out a fire in the breezeway that came from Norm's room via the large hole in the drywall.

By signing this agreement, N [tenant] is re-affirming that if he assaults or threatens anyone, violates building rules, or damages property, he will be evicted from the [name of building].

In addition to the above cited incidents, the landlord described the tenant's former suite as being very dirty, with multiple holes in the drywall and "severe" damage to it. The landlord included photos of the room which displayed a significant number of items strewn through the unit and several large holes in the wall. The landlord explained that the damage caused to the room pictured in the photographs rendered the suite

uninhabitable, leading the tenant to be moved to a different suite. Further, the landlord presented evidence that the tenant had denied entry of his rental unit to building's staff while the April 13, 2022 fire was taking place, thus endangering himself and all occupants of the building. These events are recorded in the logbook provided in evidence.

The tenant's advocate presented detailed submissions on the tenant's behalf. The advocate, D.A. described the evidence against the tenant as 'circumstantial' and questioned the landlord's evidence as it related to the tenant's responsibilities for the fires, arguing that limited evidence existed regarding the fire's source, that no witnesses were able to link the tenant to the fires and noted no damage had been caused to the tenant's room following the April 13, 2022 fire. Further, the D.A. argued that no pre-tenancy inspection of the suites had been performed by the parties, rendering it impossible to determine who had caused damage to the suite.

The tenant himself disputed the authenticity of the video evidence, however, this argument was not presented by his advocate. The tenant described the alleged assault of his neighbour as a being different than what was shown on video and noted he had been a good resident of the apartment building following the April 13, 2022 fire. The tenant and his advocate both noted the tenant's room had been cleaned up with much debris and many items being removed. The tenant disputed he caused the April 8, 2021 fire, noting that it may have come from an above occupant who discarded a cigarette.

Analysis

Rule of Procedure 6.6 notes, "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 landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy."

During the hearing, the landlord provided three specific reasons why they felt the tenancy should end. The landlord cited two fires along with an assault of the tenant's neighbour by the tenant himself and which was captured on video. Further, the landlord alleged the tenant had failed to comport himself in accordance with a last chance agreement signed between the parties on June 8, 2021.

The tenant's advocate argued that the landlord had failed to provide sufficient evidence directly tying the tenant to the fires. The tenant's advocate argued that the landlord was relying on second hand information and that his accusations were based on

circumstantial evidence. The tenant himself disputed the version of events related to the assault of his neighbour, while denying involvement in the fires.

After having considered the submissions and testimony of the landlord, the tenant and the tenant's advocate I find that the landlord has met the burden as described in Rule of Procedure 6.11 and that it is more likely than not that the facts occurred as claimed. I find the landlord's detailed ledger/logbook and the video evidence to be particularly helpful in making my determination as they contain significant detail that corresponds with the testimony of the landlord and are in keeping with the description of the fires and the assault.

I found the landlord to be consistent in his recollection of events and I find he has sufficiently demonstrated that the tenant has seriously jeopardized with the health or safety or lawful right of another occupant or the landlord, particularly as it relates to the two fires and the assault of his neighbour.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply.

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in 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: October 5, 2022

Residential Tenancy Branch