



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Beaver Valley Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC-MT**

Introduction

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

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- for more time to dispute the One Month Notice pursuant to section 66

Both parties attended the hearing with the landlord represented by agents BP, GT, and PE, and counsel LL, while the tenant TH appeared for himself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

I confirmed service of the hearing package and parties’ evidence and no issues arose.

Preliminary Issue

The tenant applied for more time to dispute the One Month Notice. All parties agreed that the One Month Notice was served in person on August 29, 2022 and the tenant made his application for dispute resolution on September 6, 2022 which was within the legislative timeframes. All parties agreed to proceed to hearing the tenant’s dispute of the One Month Notice.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant?

Background and Evidence

The tenancy commenced January 1, 2014 on a month to month basis. Rent is currently \$429.00 per month due on the first day of the month and a security deposit of \$184.00 per month is still held in trust by the landlord. The tenant still occupies the rental unit.

The One Month Notice listed two grounds for ending the tenancy:

1. 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, or
 - (iii)put the landlord's property at significant risk;
2. 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;

The landlord stated that the One Month Notice was issued for two reasons:

1. The tenant has unreasonably interfered with the safety of other occupants and staff in the residence with both verbal and physical aggression.
2. The tenant continues to smoke in his unit in violation of the tenancy agreement, adversely affecting the safety or physical well-being of other occupants.

The tenant occupies a rental unit in an unassisted low-income seniors' living facility. Counsel for the landlord stated that the occupants of this facility are low-income seniors and are therefore vulnerable. The tenant has engaged in repeated aggressive verbal behaviour both with other occupants and staff. On December 1, 2020, there was a physical altercation between the tenant and another occupant of the residence. There were also complaints from other occupants stating that the tenant was often inebriated in the common areas of the facility. Counsel referred to an affidavit of GT sworn October 26, 2022, which was produced in evidence summarizing the complaints of occupants of

the facility regarding the tenant's aggressive behaviour and excessive noise caused by the tenant. The affidavit referenced an incident where the maintenance manager overheard the tenant verbally threaten another occupant. The affidavit specifically notes that the complainants are afraid to be identified because they fear retaliation by the tenant.

Counsel for the landlord also stated that the tenant continues to smoke in the rental unit, despite repeated warnings that smoking was prohibited and in violation of clause #12 of the tenancy agreement. The contractors doing work in the tenant's rental unit advised the landlord in September and December 2019 that the tenant was smoking in the rental unit. The tenant was given written warnings regarding smoking on February 26, 2020 and February 10 and 18, 2022.

The tenant stated that he is on medication which causes confusion and loss of balance. He produced a letter from his doctor to corroborate the effects of the medication. He denies being verbally aggressive to other occupants. He admits the physical altercation. He admitted to smoking in the rental unit early on in his tenancy but denied that he has smoked in his unit recently and stated he has not smoked in the unit in years. He stated that he smokes outside the facility.

The landlord stated that if an order of possession is granted, they agree that it should be issued for the end of November to give the tenant an opportunity to explore other housing options including assisted housing.

Analysis

The tenant confirmed receipt in person of the One Month Notice on August 29, 2022 with an effective date of September 30, 2022. Service is in accordance with section 88 of the Act. The One Month Notice complies with the form and content requirements of section 52 of the Act.

Section 47 of the Act permits a landlord to issue a One Month Notice on one or more of several grounds, the relevant ones for this application are reproduced below:

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, or
 - (iii) put the landlord's property at significant risk;,,,
- (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 based on the evidence of complaints from other occupants detailed in the affidavit of GT, the maintenance manager of the residence, as well as the ongoing written documentation of incidents, the tenant has engaged in verbally aggressive behaviour towards the other occupants of the facility on several occasions. I find that the tenant's behaviour has unreasonably disturbed other occupants of the facility as well as seriously jeopardized the right of the other occupants to quiet enjoyment of their property.

Clause 12 of the tenancy agreement prohibits smoking in the rental unit. RTB Policy Guideline 8 provides guidance on when a term of a tenancy will be considered material:

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that it is a material term of the tenancy agreement as the occupants of the facility are seniors who would be especially vulnerable to the effects of smoke as well as having a reduced mobility and unable easily vacate the premises in the event of fire. Based on the written documentation of complaints of the tenant smoking as well as the evidence from contractors I find that the tenant has been smoking in his rental unit. The tenant states that upon receipt of written warnings he stopped smoking in his rental unit and now smokes outside. I prefer the evidence of the landlord on this point and find that the tenant continued to smoke in his rental unit after having received written warnings from the landlord to stop and a timeline to rectify the breach. The evidence of the landlord comes from multiple individuals including a contractor hired to perform work in the tenant's unit. The landlord issued letters on three separate occasions over two years warning the tenant that smoking in the rental unit was in breach of the tenancy agreement, and he was given an opportunity each time to correct the issue. He failed to do so.

I dismiss the tenant's dispute of the One Month Notice. The One Month Notice is valid and enforceable. The landlord is entitled to an order of for the rental property possession pursuant to section 55(1) of the Act.

Conclusion

The landlord is granted an order of possession which will take effect at 1:00 pm on November 30, 2022. The order of possession must be served on the tenant. The order of possession may be filed in 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: November 04, 2022

Residential Tenancy Branch