



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT, CNL**

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
- cancellation of the landlord’s Two Month Notice to End Tenancy for Landlord’s Use (“Two Month Notice”) pursuant to section 49
- reimbursement of the filing fees for both applications pursuant to section 72

Both parties attended the hearing with the landlord LY attending with AY, and counsel TA. The tenant AC attended with counsel LH. 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.

The tenant acknowledged service of both the One Month and Two Month Notices. Both parties confirmed through counsel that all notices and materials were properly served on the parties. Pursuant to section 88 and 89 of the Act the parties are found to have been properly served.

Background and Evidence

The tenancy commenced on September 1, 2022. Rent is \$1,950.00 per month due on the first of the month. The landlord holds a security deposit of \$975.00 in trust for the tenant. The tenant currently occupies the rental unit.

One Month Notice

The One Month Notice was dated September 25, 2022. The landlord provided three grounds for serving the notice:

<input type="checkbox"/>	Tenant is repeatedly late paying rent
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/>	put the landlord's property at significant risk
<input type="checkbox"/>	Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.

A document was provided in evidence by the tenant allegedly signed by the landlord that purported to withdraw the One Month Notice. The landlord argues that he signed the document after speaking to the tenant's counsel and did not have the benefit of independent legal advice prior to signing the withdrawal of the One Month Notice. He stated that he believes the One Month Notice is still valid, and it was not his intention to withdraw the One Month Notice.

The tenant's counsel disputed that he had acted improperly by getting the landlord to sign the withdrawal notice. He points to an email in evidence dated November 11, 2022 as supporting his point, and noticed that the withdrawal document was not signed until November 24, 2022. Therefore, he was not placing undue pressure on the landlord and the landlord signed the withdrawal notice on his own volition.

The landlord stated that the reason for issuing the One Month Notice was that on September 24, 2022 at 3:00am he happened to look out the window into the back yard of the residential property and observed the tenant standing naked in the back yard. He was disturbed by this behaviour. The landlord also provided a letter from a neighbour who did not witness the incident, however expressed concern with the tenant's behaviour because she has an underage child who lives with her.

The tenant does not deny the landlord's allegations. The tenant explained that on the evening of September 23, 2022, he had been on a date, and had brought his date home. They were sitting outside in the backyard listening to music but decided at some point to go inside the rental unit. The tenant went to sleep and woke up at approximately 3:00am realizing he had left his phone outside. He made a decision given the time to retrieve his phone from the backyard without getting dressed. He testified that he was only in the backyard for a very brief time, here merely retrieved his phone and went back inside the rental unit. He did not see anyone while outside. He stated this was a "one off" incident specific to the circumstances and did not intend to repeat the behaviour.

Two Month Notice

The Two Month Notice is dated October 29, 2022. The landlord testified that he and his wife live in the main part of the subject residence which is a single family home with a rental unit in the basement. The landlord and his wife sleep in separate bedrooms because the landlord snores loudly. The landlord has decided to do renovations to his wife's bedroom to improve the soundproofing in the room. He will be doing this work outside of his regular employment and estimates that it will take him approximately eight months to complete the renovations.

The tenant alleged that the landlord is not acting in good faith and does not intend to use the rental unit for the purpose stated. He raised the fact that the two notices were issued within a short time frame as evidence of the landlord's ulterior motive.

Analysis

RTB Rules of Procedure 6.6 states, "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 onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

One Month Notice

The parties agree that the tenant's conduct in the early morning hours on September 24, 2022 is the reason why the landlord issued the One Month Notice. I find that the tenant has not established that the landlord intended to withdraw the One Month Notice. I further find that the landlord has not established that the One Month Notice is valid.

The parties agree on the facts of the incident, the tenant was in the backyard of the rental unit at 3:00am on September 24, 2022 and was naked. However, I find that the landlord has not established either that the tenant significantly interfered with or unreasonably disturbed the landlord or another occupant, or that the landlord's health and safety was seriously jeopardized. The actions were brief, and it was at a time of day that could reasonably be expected that the landlord or other occupants would not be awake and using the backyard facilities of the rental unit. There is no evidence that anyone other than the landlord observed the tenant, and the landlord has not established how a brief observation of the tenant nude on one occasion would be an unreasonable disturbance. It may be a disturbance but does not reach the required level of an unreasonable disturbance as contemplated by the legislation.

Additionally, it is not clear how the tenant's behaviour jeopardized the health and safety of the landlord. The landlord has provided no evidence to establish how his health and safety was jeopardized.

The information provided by a neighbour is not relevant. The neighbour did not observe the tenant's conduct and was merely providing an opinion based on information provided to her by the landlord. The neighbour is not an occupant as contemplated by the Act and therefore cannot be a person who is disturbed by the tenant's behaviour under the Act.

The landlord alleged that the tenant violated section 174 of the Criminal Code, which makes it a criminal offence to be nude in public. I have no evidence before me to establish that the tenant was charged or convicted of any Criminal Code offence in relation to this incident, and I do not have jurisdiction to decide that the tenant committed a criminal offence.

Given that I have found that the tenant's behaviour did not amount to cause to issue the One Month Notice under the legislation, I do not need to consider the tenant's post offence conduct as described in the case law provided by the tenant.

I therefore grant the tenant's application to cancel the One Month Notice.

Two Month Notice

The landlord issued the Two Month Notice dated October 29, 2022 to the tenant in order for his wife to occupy the rental unit for approximately eight months while he renovates her bedroom. The tenant argues that the landlord is not acting in good faith. RTB Policy Guideline 2A states:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

The landlord bears the onus of establishing that the rental unit is going to be used by himself or a close family member for at least six months. I find that the landlord has not satisfied his onus.

The fact that the two notices were issued within a short time frame is a factor I have considered, however it is not the only factor I have considered.

The only evidence I have from the landlord is his assertion under oath that he intends to allow his wife to use the rental unit. The landlord stated that he would be renovating his wife's current sleeping space, but provided no other evidence such as building plans, receipts for purchase of materials to renovate, or building permits. Further, the landlord stated that the time frame for completing the work is eight months, however as the landlord is doing the work himself, I find that this is a ballpark estimation, and there is no evidence supporting this time frame.

The tenant's application to cancel the Two Month Notice is granted.

As the tenant was successful in both applications, he is entitled to recover the filing fees for both applications.

Conclusion

The tenant's applications to cancel the One Month Notice and the Two Month Notice is granted. The tenant is permitted to deduct \$200.00 from one month's future rent on a one time basis in satisfaction of the recovery of the filing fees. This tenancy shall continue until it is ended in accordance with the *Act*.

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: December 20, 2022

Residential Tenancy Branch