



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 43 HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application for cancellation of a One Month Notice to End Tenancy for Cause ("1 Month Notice").

Both parties appeared or were represented at the hearing. The parties were affirmed. The tenants were assisted by a translator.

I confirmed that the tenant served the proceeding package to the landlord.

I heard the landlord's evidence package was sent to the tenant via registered mail and the tenant received the package. Accordingly, I admitted the landlord's evidence package into evidence.

After receiving the landlord's evidence package, the tenant prepared a written submission and uploaded it to the Residential Tenancy Branch system; however, it was not served to the landlord. Since the written submission was not served to the landlord, I informed the parties that I would not admit or read it; however, I would permit the tenants the opportunity to have it read aloud during the hearing.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

All relevant evidence was carefully considered in reaching this decision. However, only relevant oral and documentary evidence needed to resolve the issue(s) of this dispute, and to explain the decision, is referenced in this decision.

Issue(s) to be Decided

Should the 1 Month Notice be upheld or cancelled?

If the notice is upheld, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy started on April 1, 2020 and the landlord collected a \$500.00 security deposit. The rental unit is in a BC Housing subsidized housing complex that is operated by the landlord, a housing society. The tenant's rent obligation, after the subsidy is applied, is currently \$493.00 due on the first of the month.

The rental unit was described as being a townhouse style unit in a townhouse complex operated by the landlord. The rental unit is occupied by the two tenants and their three children.

The landlord issued the subject 1 Month Notice and sent it to the tenants via registered mail on July 5, 2022. The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

The 1 Month Notice has a stated effective date of August 31, 2022 and indicates the following reasons for ending the tenancy:

<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.
<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 adversely jeopardize a lawful right or interest of another occupant or the landlord.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input type="checkbox"/>	Tenant has not done required repairs of damage to the unit/site/property/park
<input checked="" type="checkbox"/>	Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Cause on page 2 of the 1 Month Notice, the landlord wrote:

Details of the Event(s):

This household has put the safety of our tenants at risk. The family has also interfered with the quiet enjoyment of other residents in the complex. On June 20th, R [REDACTED], the 12 year old daughter, assaulted another child who lives in the complex. R [REDACTED] was given conditions for her release which she has breached more than once. A warning letter was given to the tenants on June 27, 2022 about this incident and reminded them about breaching Section 23 of their tenancy agreement as they are responsible for the behaviour & conduct of all occupants and guests. On June 30th the children & guests of this household assaulted another child in the complex; he was hospitalized.

Tenants have expressed concern for their children and their safety. Some report they are scared to leave their home because of the daughters of this family and their friends. 4 [REDACTED] are also worried about the safety & security of our tenants and our property.

[Names obscured by me for privacy]

Landlord's position

The landlord submitted that on June 20, 2022 the tenants' 12 year old daughter [herein referred to as "R"] assaulted a female child who also resides in the townhouse complex. The victim went to hospital and R was taken away by police. R has charged criminally and released with conditions.

On June 27, 2022 the landlord issued a letter to the tenants regarding the June 20, 2022 incident. The landlord wrote in the letter to the tenants, in part:

Any physical or verbal threats are taken seriously which is why I would like to remind you about Section 23 of your signed tenancy agreement which states:

23. Conduct

The tenant agrees that if any occupant or guest causes unreasonable and/or excessive noise or disturbances the landlord may end the tenancy.

Furthermore, under Section 28 & 46 of the Residential Tenancy Act, 43 Housing is obligated to protect the right of quiet enjoyment of all tenants. Landlords may end a tenancy if a tenant or tenant's guest has "adversely affected or is likely to adversely affect the quiet enjoyment of another occupant."

Incidents that disturb other tenants are considered to be a breach of tenancy and may be grounds to end a tenancy.

We hope your family is able to access any needed support. Please do not hesitate to contact me if you need any help in finding more support. And if you would like to discuss further, please contact the office and we can set up a time to meet.

On June 30, 2022 a male child who resides in the townhouse complex was assaulted by R and her friends when he was taking the garbage out. Police and ambulance arrived and R's boyfriend was arrested. The tenant's 14 year old daughter [herein referred to as "T"] was also involved in the fight. The child who was assaulted was injured in his upper body and face and was in the hospital for two days as a result of the assault. Both R and T have been charged criminally with assault regarding the June 30, 2022 incident and released with conditions.

The landlord proceeded to issue the 1 Month Notice on July 5, 2022 given the seriousness of the violence against other occupants of the residential property. The landlord met with the tenants on July 7, 2022 to explain their reasons to seeking to end the tenancy and the landlord suggested the tenants explore transferring to a different BC Housing property.

Since these two assaults, there have been no further physical fights on the residential property that the landlord is aware of; however, the landlord is aware of fighting involving the tenants' daughter R taking place off the property in August 2022, after the 1 Month Notice was served.

The landlord submitted that it is reluctant to evict tenants; however, the other occupants of the property are scared and afraid that the assaults will resume on the property if the tenants remain.

The landlord questioned whether R's boyfriend is residing at the rental unit since the landlord observed a police car near the property and R's boyfriend proceed to the rental unit.

The landlord requested an Order of Possession effective January 31, 2023.

Tenant's position

The tenants stated that the girl assaulted on June 20, 2022 had been stalking R on social media and the two girls met on the property to physically fight. There was nobody taken away by police and no medical attention was required. The girl's mother came to the rental unit and yelled at the tenants about the fight. The tenants acknowledged that R has been charged with assault and given conditions to not go near the girl she was fighting with. The tenants did not know if the other girl was charged with fighting since the tenants did not press charges against the girl. R has appeared in

court but the proceeding has been adjourned and the matter is still pending. The tenants stated they have a lawyer who will “fix” everything.

The tenants acknowledge receiving the landlord’s June 27, 2022 letter.

As for the incident of June 30, 2022, the tenants stated that it was not their daughters who were fighting with the boy. Their daughters just so happened to be outside, beside their rental unit, when the boy was taking out the garbage and he told T that he would have her beaten by five bigger friends because of what R did to his sister on June 20, 2022. In response to these comments, T’s friends beat the boy and T only tried to break up the fight. R’s boyfriend was taken away by police because he had a warrant out for him because he is a missing person. The tenants state their daughters were not taken away by police; however, T has had conditions imposed upon her to not go near the boy based on the boy’s mother alleging their daughters were the assailants.

The tenants agree they met with the landlord on July 7, 2022 and the tenants have made an application for transfer to a different property; however, the application is still pending.

The tenants allege that somebody has also made false accusations against their family to child protection workers, alleging their daughters are doing drugs and drinking; however, the file was closed after Ministry workers met with them.

As for fighting off the property in August 2022, the tenants state they are aware of a video that appeared on social media on August 29, 2022. When they asked R about the video, R’s response to them was that it was an old video.

The tenants acknowledge that R was expelled from school last year but this year R is attending a special school where she is receiving counselling. The tenants state that R has not been diagnosed with any disorder except she does have difficulties dealing with people.

The tenants point out that the issues raised by the landlord largely involve their 12 year old daughter and the tenants want the opportunity to deal with those issues and the tenants request they be permitted to continue this tenancy until their transfer to a different property takes place. The tenants state they receive disability income and cannot afford to move to market housing.

As for the landlord's question concerning R's boyfriend, the tenants stated that the boyfriend who was taken into custody on June 30, 2022 is no longer R's boyfriend and that R has a new boyfriend. The police came looking for R's ex-boyfriend at the rental unit because he doesn't want to leave R alone and because he did not return to his family home after the break-up.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the notice. Where multiple reasons are indicated on the 1 Month Notice, it is sufficient to end the tenancy where only one reason is proven. The landlord's burden of proof is based on the balance of probabilities.

Every tenant is entitled to quiet enjoyment and the landlord is obligated to protect a tenant's right to quiet enjoyment pursuant to section 28 of the Act. Quiet enjoyment, as provided in section 28 of the Act includes:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy guideline 6: Right to Quiet Enjoyment provides information and policy statements with respect to every tenant's right to quiet enjoyment and the landlord's obligation to protect it.

Where a landlord is aware that a tenant's right to quiet enjoyment has been breached by another tenant or occupant of the residential premises, the landlord is expected to take action, which may include eviction of the offending tenant. Accordingly, section 47 of the Act provides a mechanism for a landlord to bring a tenancy to an end where:

(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;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The landlord indicated reasons on the 1 Month Notice that correspond to section 47(1)(d) and (e).

A tenant's right to quiet enjoyment may be breached by illegal activities or activities that are not illegal. With respect to illegal activities in particular, Residential Tenancy Policy Guideline 32: *Illegal Activities* provides information and policy statements with respect to ending a tenancy for illegal activity. Below, I have provided relevant excerpts from the policy guideline:

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

If a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity. The tenant may be found responsible for the illegal activity whether or not the tenant was actually present when the

activity occurred, so long as it was in the rental unit or on the residential property. For example, the tenant may know that his or her guest has been arrested for breaking and entering. The guest breaks into the rental unit of another tenant. This may constitute grounds for ending the tenancy for illegal activity. A further example may be where a tenant allows a teenage child of the tenant to have a party in the rental unit or on the residential property while the tenant is away and one of the party guests commits an illegal act in circumstances where supervision would be found to be warranted and where the tenant knew or ought to have known that such an illegal act could occur in the circumstances (underage drinking, use of drugs, presence of a weapon).

The test of knowledge attributable to the tenant is the "reasonable person" test. If a reasonable person would be expected to know or ought to know that illegal activity might occur, the tenant will be responsible whether or not the tenant actually possessed this knowledge. In other words, willful or inadvertent blindness to the possibility will not save the tenant from the consequences of the guest's illegal activity.

The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities.

[My emphasis underlined]

In the case before me, it is asserted by the landlord that the tenants' two daughters, R and T, have engaged in physically assaulting two other occupants of the residential property, in the common areas of the residential property, on two different occasions. The tenants did not deny that the incidents occurred on the residential property and involved other occupants of the residential property but the tenant denied or minimized the conduct of their daughters.

As evidence of the assaults that involved the tenants' two daughters on the residential property on two different occasions, the landlord put forth evidence that included:

- the Release Order from the Youth Justice Court that provides that R has been charged with assault under the Criminal Code with respect to the incident on

June 20, 2022 and two counts of assault with respect to the incident of June 30, 2022; and,

- the Release Order from the Youth Justice Court that provides that T has been charged with assault under the Criminal Code with respect to the incident of June 30, 2022.

Both of the Release Orders include orders for R and T to avoid contact with the victims and to not go to the residential property, south of a particular unit, along with other places.

The tenants were notified of R's conduct on June 20, 2022 by the mother of the victim and by the landlord in the letter of June 27, 2022. The landlord also clearly communicated to the tenants that such conduct would be grounds for ending the tenancy. As such, I find that after the incident of June 20, 2022 the tenants ought to have knowledge that their daughter had engaged in physical fighting with another occupant while on the property and that further such behaviour would grounds for ending the tenancy. Upon becoming aware of fighting by R, I would expect that the tenants, as the parents, would ensure their daughters were aware of the consequences of further physical fighting and the tenants/parents would take all reasonable action to ensure such activity did not recur.

Unfortunately, I did not hear from the tenants that they took action to communicate to their daughter(s) the consequences of fighting with other occupants on the residential property or that they took any steps to curb such activity from happening again. Rather, in responding to the landlord's evidence, the tenants appeared to attempt to justify or minimize their daughter's actions. For example, the tenants pointed to social media harassment prior to the assault of June 20, 2022 and the tenants pointed to alleged statements the victim made before he was assaulted on June 30, 2022. Further, when faced with a subsequent video circulating on social media involving their daughter fighting outside of the residential property, the tenants appear to just accept their daughter's word that it was an old video.

While R and T have yet to have the criminal charges heard and decided in court, it is not necessary for a criminal conviction to find sufficient basis for ending the tenancy as the burden of proof the landlord has in this proceeding is based on the balance of probabilities which is much less than the criminal burden of proof.

Considering the crown prosecutor has approved criminal charges of assault against R and T with respect to the incidents of June 20, 2022 and June 30, 2022 indicates to me that there is sufficient evidence of assault by R and T that the crown prosecutor is satisfied there is a substantial likelihood of conviction. I find that standard for approving criminal charges is sufficient to satisfy me, on a balance of probabilities, that the tenants' daughters have engaged in assault on other occupants of the residential property while on the residential property. Therefore, I uphold the 1 Month Notice and I dismiss the tenant's request that I cancel it.

Section 55(1) of the Act provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have upheld the 1 Month Notice and dismissed the tenant's application to cancel it. Upon review of the 1 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

I find the landlord's request for an Order of Possession effective January 31, 2023 to be very generous considering there is a propensity for violent attacks on other residents in the complex. Therefore, I grant the landlord the Order of Possession as requested.

Conclusion

The 1 Month Notice is upheld and the tenant's application is dismissed.

The landlord is provided an Order of Possession effective on January 31, 2023.

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 15, 2022

Residential Tenancy Branch