



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding COMPLETE RESIDENTIAL PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On January 21, 2023, 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”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with K.B. attending as her advocate. D.L. and G.B. 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.

K.B. advised that the Landlord was served the Notice of Hearing and evidence package by registered mail on February 1, 2023, and D.L. 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 Tenant’s Notice of Hearing and evidence package. Furthermore, as this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the “Rules”), I have accepted all of the Tenant’s evidence and will consider it when rendering this Decision.

G.B. advised that the Landlord's evidence was served to the Tenant by being attached to her door on February 9, 2023. The Tenant claimed that she did not get this package on February 9, 2023, because she did not discover it on her door on that date. While she could not remember the exact date that she received this evidence, she confirmed that it was more than seven days before the hearing. As the Tenant confirmed that she received the Landlord's evidence more than a week before the hearing, I am satisfied that this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

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 Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

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 February 1, 2007, as an unwritten month-to-month tenancy because the tenancy agreement that was submitted as documentary

evidence was not signed by the Tenant. Regardless, they agreed that the rent was currently established in the amount of \$966.00 per month, and that it was due on the first day of each month. As well, a security deposit of \$325.00 was also paid.

G.B. advised that the Notice was served to the Tenant by attaching it to the Tenant's door on January 13, 2023. Clearly the Tenant received this Notice as she indicated as much in her Application, and she disputed the Notice within the legislated timeframe. The reasons the Landlord served the Notice are 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" and/or "seriously jeopardized the health or safety or lawful right of another occupant or the landlord". The effective end date of the tenancy was noted as February 28, 2023, on the Notice.

He testified that the Notice was served to the Tenant because of her conduct on January 8, 2023. He advised that he was home on this day, when someone began pounding loudly on his door around 2:00 PM. Due to how loud this disturbance was, he opened the door and asked the person, who happened to be the Tenant, what the problem was. He stated that she threw a notice of rent increase in his direction, and warned him never to put anything on her door again. He noted that she was loudly hurling profanities when speaking to him. He informed her that he did not have to deal with her behaviour, and when he attempted to close his door, she prevented him from doing so by placing her foot in the way.

He then submitted that the Tenant physically assaulted him by hitting his arm, while shouting insults at him regarding a storage locker issue. He stated that he informed the Tenant to contact the police about the storage locker, and after the approximate five-minute interaction, the Tenant took her foot out of his doorway and left.

He stated that he subsequently locked his door and reported the assault to the police, who took his information and asked him if he would like to press charges against the Tenant. He advised that he has not done so yet, but has up to six months to consider it. He cited the police file number that he was given for this incident, but he acknowledged that the police did not attend the building to investigate his complaint or interview any of the involved parties.

He testified that he periodically took pictures of his arm to document how the injury to the area that was hit by the Tenant progressed, and he referenced the pictures submitted as documentary evidence to demonstrate the bruising that developed due to

this alleged assault. As well, he stated that he had a doctor's appointment on January 19, 2023, where this contusion on his arm was assessed.

D.L. advised that the Landlord takes these types of matters seriously.

K.B. doubted G.B.'s testimony and questioned why his pictures were not time stamped. Furthermore, she questioned why he did not submit any doctor's report corroborating his injuries.

D.L. confirmed that G.B. emailed her pictures of the injury to his arm on January 9, 11, and 12, 2023.

G.B. acknowledged that he did not submit any report from his doctor, and he advised that he had already scheduled this doctor's appointment prior to this assault. Given that he was already scheduled to see his doctor for an unrelated matter, he had the bruising on his arm assessed as well.

The Tenant made submissions regarding notices that have been "posted all over the building" in the past, and she brought up issues she had with her storage locker. She confirmed that she went to G.B.'s apartment to confront him about specific issues that she had pertaining to the management of the building. She acknowledged that she knocked on his door forcefully, and she stated that G.B. came to the door swearing while telling her to leave.

She confirmed that she placed her foot in the doorway, preventing him from closing it, and that she demanded that he answer her questions. She testified that he calmed down and he answered some of her questions. After he confirmed that he was the manager of the building, she took her foot out of the doorway and happened to see K.B. as she glanced behind her. She advised that G.B. then "shoved" her and slammed the door. She stated that she did not assault G.B., that she has no idea how he hurt his arm, and she speculated that it was due to the force of him attempting to close his door when she was blocking it with her foot.

When she was questioned why she did not call the police due to her allegations of being assaulted, K.B. advised that the Tenant did not do so because she was shaken by the incident. She testified that she heard this confrontation from her apartment, and while she did not witness the entire interaction between G.B. and the Tenant, she did witness G.B. "shove" the Tenant on the shoulder with two hands. She stated that the Tenant

was too shaken up to call the police, and was too afraid of potential repercussions if she did. She acknowledged that she did not witness if the Tenant assaulted G.B. or not.

G.B. advised that K.B. could not have witnessed this interaction as her apartment is around a corner.

K.B. acknowledged that her apartment is “tucked in a corner”, but insisted that she can view G.B.’s door from her front door.

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

(ii) 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.

I also 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 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, the consistent and undisputed testimony before me is that the Tenant was upset with some issues within the building, and that she intentionally went to confront G.B. about them on January 8, 2023, at his home. Moreover, the Tenant acknowledged that she demanded that he answer her questions, and that she deliberately placed her foot in the threshold of G.B.'s door to prevent him from closing it. I also have before me, G.B.'s solemnly affirmed testimony that he was assaulted by the Tenant during this interaction, pictures of bruising to his arm as a result of this alleged assault, solemnly affirmed testimony from D.L. that pictures of his injuries were subsequently sent to her, and evidence that he reported this incident to the police.

While the Tenant claimed that at no time did she assault G.B., from the Tenant's own testimony, I accept that she was angry about some issues that she perceived were a problem, and that her intention was to challenge G.B. about them, at his home, until she was satisfied that she would obtain the outcome she desired. In my view, I do not find the manner in which the Tenant elected to raise her concerns to be acceptable, as it was clear from her demeanour that her actions were intentional, and by design to antagonize and provoke G.B., rather than to have a respectful conversation.

Furthermore, as she acknowledged that she placed her foot in G.B.'s doorway, I am also satisfied that this further supports a finding that there was no intention on her part to discuss or resolve any differences in a mature, responsible manner as it is clear that her objective was to obstruct G.B.'s privacy, in his own personal space, until she was satisfied in obtaining an outcome that she believed was to her benefit. Ultimately, I find that from the outset, the Tenant more likely than not approached this situation in a hostile and aggressive manner.

While she denies striking G.B., when reviewing the pictures submitted as documentary evidence, I note that the bruise depicted on G.B.'s arm was located on the inside of his

forearm. In assessing these pictures objectively, I reject the Tenant's speculation that this bruising was caused by him attempting to close the door forcefully. It does not make any logical sense how the location of this bruising would appear on the inside of his forearm as, in my view, I do not find it reasonable that a person would likely attempt to close a door using the inside of their forearm. Given that the Tenant had intentionally blocked the doorway, I find that any attempt to close a door in this manner would result in having less leverage, and this would not be consistent with common sense or ordinary human experience.

Moreover, while the Tenant claimed that G.B. "shoved" her, as corroborated by K.B., it is entirely possible that this did occur. However, given the severity of this allegation, I find myself somewhat skeptical of why the Tenant would not report this assault to the police, despite the reasoning provided. Regardless, the consistent and undisputed evidence is that K.B. did not witness the entire interaction, and she cannot speak to whether the Tenant assaulted G.B. or not. The salient issue that I have to consider here pertains to whether or not the Tenant behaved in a manner that justified service of the Notice.

If it is the Tenant's position that G.B. assaulted her, there are other avenues for the Tenant to pursue if true; however, those avenues will not be addressed in this Decision as they are not relevant to the issue that I must consider here because the Tenant denied striking G.B. altogether. Based on this denial, any argument that a physical assault on G.B. occurred as a result of self-defence after being "shoved" by G.B. can be logically ruled out.

In considering the totality of the circumstances before me, it is undisputed that this situation was borne out of the intentional decision made by the Tenant to initiate an interaction with G.B. in a confrontational, aggressive, and hostile manner at his place of residence. Given this antagonistic demeanour, and her clear intent to deny G.B. any privacy until she received her desired outcome, I find it more likely than not that this interaction deteriorated to the point that the Tenant struck G.B., based on a balance of probabilities. I find the testimony and evidence from G.B. and D.L. to be more credible than that of the Tenant or K.B. As I am satisfied that the Tenant's inappropriate and malicious actions are more plausible and consistent with the Landlord's evidence, I prefer the Landlord's evidence on the whole.

Based on my assessment of the evidence presented, I am satisfied that the Tenant has purposefully engaged in unnecessary, unacceptable, aggressive, and belligerent

behaviours that are wholly inexcusable. While the Tenant may have been dissatisfied with the manner that the property was managed, it is evident that the Tenant's approach to dealing with her concerns resulted in her jeopardizing her own tenancy. As such, I am satisfied by the Tenant's actions that the grounds for ending the tenancy have 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 February 28, 2023, 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 **two days** after service of this Order on the Tenant.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

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 **two days** 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: March 4, 2023

Residential Tenancy Branch