



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT

Introduction

On November 25, 2022, the Tenant submitted an Application for Dispute Resolution filed under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) dated November 14, 2022, and for more time to dispute the Notice. The matter was set for a conference call.

The Landlord, represented by two Property Managers (the “Landlord”) and the Tenant, represented by the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the tenant entitled to more time to file to dispute the Notice?
- Should the Notice dated November 14, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on June 1, 2016, and that rent for the unit was \$750.00 per month, however, the Tenant pays the subsidized rate of \$435.00 per month, and the Landlord is holding a \$375.00 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on November 14, 2022, by posting the Notice to the front door of the rental unit. Both the Landlord and the Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Tenant has allowed an unreasonable number of occupants in the unit/suite/property/park.*
- *Tenant or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
 - *Put the Landlord's property at significant risk.*
- *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 property.*

The Notice states the Tenant must move out of the rental unit by December 31, 2023. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the

Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Tenant's application recorded that they filed to dispute the notice on November 25, 2022.

The Landlord testified that the Tenant has repletely violated their prohibited guest policy, allowing banned guests access to the building. The Landlord testified that these banned guests are aggressive towards staff and other occupants of the building and that they sell drugs from the building. The Landlord testified the Tenant has been repeatedly informed that these guests are prohibited but that they keep bringing them into the building. The Landlord submitted four incident reports into documentary evidence.

The Landlord was asked to provide details of the actions of the Tenant's guests on the dates outlined in the incident reports. The Landlord testified that they were unable to speak to the actions of the Tenant's guests on three of the incident reports but that the reports clearly recorded that the Tenant's guests were banned, and the Tenant still granted them access to the property.

The Landlord testified that one of the four incident reports, the October 26, 2022, report, clearly stated the actions of the Tenant and their guests while on the rental property. The Landlord submitted that the Tenant with several guests had threatened an occupant as well as staff in the building when they were attempting to collect on a drug-related debt. The Landlord's written submission recorded the following:

“*** called Writer around 02:14 am and she asked Writer to check if there are people hanging outside her door trying to get in, she said those people were trying to hurt her. Writer checked the live camera and there were 4 unknown Male guests, accompanied by a tenant - D and her guest L. Writer confirmed to *** that all six of them were hanging right in front of her door, so she asked Writer to call RCMP. Emergency RCMP was contacted and three cops cars arrived at 02:25am, Writer let the police officer to the second floor and they kicked the unknown male guests out of the building, one of the guests who goes by name "T" threatened Writer and asked why the cops were called and then T said more problems will come to this building and then he proceeded to leave the property. RCMP officers left the building at 02:45 am after all four of the Male guests were gone.”

[Reproduced as written, names abbreviated]

The Tenant testified that they were not involved in the October 26, 2022, incident and that the incident report was inaccurate. The Tenant also testified that they had not let the people, who were involved in the incident, into the building on October 26, 2022.

The Tenant testified that they have only allowed their son access to the rental property but that they should be allowed to have their son visit them if they wish, and that their son had not acted the way the Landlord is claiming.

The Landlord testified that they have issued three warning letters to the Tenant regarding the Tenant repeated actions of allowing banned persons into the rental property. The Landlord submitted three letters that had been sent to the Tenant, dated April 29, 2022, May 26, 2022, and November 3, 2022.

The Landlord submitted that the November 3, 2022, letter indicated that this was the third and final warning and that the tenancy would end if there were further incidents. The letter stated the following:

“This letter serves as your third and final warning. Further infractions will likely result in the termination of your tenancy.”

The Landlord was asked to testify to the incident that happened between this letter dated November 3, 2022, and November 14, 2022, the date the Notice was issued. The Landlord testified that there was no record of an incident between November 3, 2022, and November 14, 2022, for this tenancy.

The Landlord was asked why they had issued a warning indicating that “Further infractions will likely result in the termination of your tenancy,” but then chose to end the tenancy before another infraction occurred. The Landlord testified that it was the decision of their Board that resulted in the Notice being issued.

The Tenant submitted that this Notice should be cancelled, as the Landlord should not be able to end their tenancy due to the son visiting them, and that there is no proof that the Tenant or their son participated in the October 26, 2022, incident or any behaviour that would warrant the end of their tenancy.

The Landlord submitted the Tenant has repeatedly breached the banned guest’s policy set out in the tenancy agreement and that this is sufficient to end the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant was deemed to have received the Notice to End Tenancy three days after it was posted to the front door of the rental unit, on November 17, 2022. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. Accordingly, the Tenant had until November 27, 2022, to file their application to dispute the Notice. I have reviewed the Tenant's application, noting that they filed their application on November 25, 2022, within the statutory time limit.

As the Tenant filed their application to dispute this notice within the statutory time limit, I find that a determination is not required on the Tenant's request for more time to dispute the Notice.

The Landlord indicated three reasons on their Notice as the cause for ending the Tenant's tenancy; I will address each one individually:

- 1) Tenant has allowed an unreasonable number of occupants in the unit/suite/property/park.

I have reviewed the totality of the testimony and submission provided during these proceedings by the Landlord, and I find that the Landlord did not provide any testimony or documentary evidence regarding their claim that the Tenant had allowed an unreasonable number of occupants in their rental unit. Therefore, I find the Landlord has failed to meet the onus to establish their claim on this point.

- 2) Tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - c. Put the Landlord's property at significant risk.

The Parties have offered conflicting verbal testimony regarding the Landlord's claim of aggressive behaviour by the Tenant and their guests. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a

dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that would be the Landlord.

I have reviewed the Landlord's documentary evidence, consisting of the four incident reports and three warning letters submitted into evidence to support this portion of their claim. After a careful review, I find that three of these incident reports do not speak to aggressive behaviour, nor do they confirm that the people involved were personal guests of this Tenant. While the fourth incident report does mention aggressive behaviour and the Tenant specifically, I must consider that the Tenant has submitted that this report is inaccurate and that they were not involved in the incident.

I have reviewed the four videos and the tenancy log provided by the Landlord in their evidence package, and I find that there is insufficient evidence to prove to my satisfaction that this Tenant or a personal guest of this Tenant was involved in the October 26, 2022, incident.

Moreover, after reviewing the fourth incident report dated October 26, 2022, I find that this report depicts an uncomfortable and heated exchange between several individuals and an employee of the Landlord. However, I find the recorded details of this event to be insufficient evidence, to satisfy me, that this verbal incident caused such significant interference to warrant the end of this tenancy, even if the Landlord had proven that this Tenant was involved, which they have not. Therefore, I find the Landlord has failed to meet the onus to establish their claim on this point.

- 3) 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 property.

On this point of the landlord's Notice, the Landlord has submitted that the Tenant and their guests have engaged in illegal activities in the rental unit, selling drugs and collection activities for the payment for drugs. Again, the Parties have offered conflicting verbal testimony regarding the Landlord's claim of engaged in illegal activity by the Tenant and their guests. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, again in this case, that would be the Landlord.

After a full review of all of the testimony and documentary submissions provided by the Landlord, I find that there is insufficient evidence to prove to my satisfaction that this

Tenant or a personal guest of this Tenant was involved in illegal activities on the rental property. Therefore, I find the Landlord has failed to meet the requirements to end the tenancy on this point.

Overall, I find that the Landlord has not proven sufficient cause, to satisfy me, to terminate the tenancy for any of the reasons indicated on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice dated November 14, 2022, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Conclusion

The Tenant's application to cancel the Notice, dated November 14, 2022, is granted. The tenancy will continue until legally 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: April 12, 2023

Residential Tenancy Branch