



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC**

Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47

Both parties attended the hearing with the landlord represented by agents DP and JT, while the tenant DF appeared for himself along with advocate DL and witness KM. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 25, 2022 with an effective date of December 31, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy commenced May 3, 2018 on a month to month basis. Rent is \$375.00 per month due on the first of the month. The tenant still occupies the rental unit.

The landlord testified that the tenant was involved in a serious incident on November 14, 2022 with a guest present on the rental property. The tenant had a knife and it was used during the altercation to threaten the other individual. The tenant had to be restrained during the incident and the police were called. The landlord provided a written statement of the incident in evidence. The landlord further stated that the tenant had been involved in previous incidents where he threatened people with a knife. A caution notice to the tenant regarding an incident October 11, 2020 was provided in evidence. The landlord stated there was similar incident with the tenant threatening individuals with a knife on February 28, 2022 but no documentation of that incident was provided in evidence.

The tenant did not deny the incident on November 14, 2022 but stated that he was defending another occupant of the rental property from an unwanted guest who was assaulting her. The tenant further stated that the guest hit him with a mop handle and at that point he defended himself with his knife. His witness KM testified that she was there during the incident and did not see the tenant with a knife.

The landlord stated that the witness KM was not present for all of the incident. The tenant pursued the guest throughout the rental property and only produced a knife in the lobby of the rental property. The landlord further submitted that staff were on duty but are trained not to intervene in incidents involving physical violence and instead to call 911 which they did in this case. The landlord further submitted that the tenant's choice on how to deal with the situation was not acceptable and was concerning for safety of others on the property.

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.

The One Month Notice lists the reason for ending the tenancy:

☐ damage the landlord's property

☒ 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.

It is undisputed that the tenant was carrying a knife and used it in an altercation with a guest on the rental property. The tenant assaulted a guest on the property.

RTB Policy Guideline 6 states in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises

The tenant had other options open to him to resolve the dispute and protect the other occupant of the rental property. He did not avail himself of these options. Therefore, I find that the landlord has established cause under section 47 of the Act to end the tenancy. I dismiss the tenant's application.

The One Month Notice in evidence meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective April 30, 2023 at 1:00 pm.

Conclusion

I dismiss the tenant's application. The landlord is granted an order of possession which will be effective April 30, 2023 at 1:00 pm. 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: April 23, 2023