



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding FAMILY DYNAMIX ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord, compensation for a monetary loss or other money owed, and recovery of the filing fee.

The tenant and the landlord's agents/representatives were present for the hearing. The hearing process was explained to the parties and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties confirmed receiving the other's evidence, and the landlord confirmed receiving the tenant's application.

The tenant filed a letter from a social worker, 8 days prior to the hearing, and another document, which the tenant indicated was another letter, but was not, 2 days before the hearing. I have excluded both documents as they were not filed within the required timelines for service of evidence.

Thereafter parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Although the tenant filed a monetary claim, their application did not list an amount claimed. The tenant explained that they want any rent paid even if evicted and the damage deposit. The tenant's claim will be addressed within this Decision.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice or is the tenant entitled to an order cancelling the Notice and recovery of the filing fee?

Background and Evidence

The tenancy began July 1, 2022, monthly rent on the written tenancy agreement filed in evidence is \$570, and the tenant paid a security deposit of \$285.

Filed in evidence was the Notice. The Notice was dated March 23, 2023, for an effective move-out date of April 30, 2023, and was served to the tenant by attaching it to the tenant's door. In their application, the tenant confirmed receiving the Notice on March 24, 2023.

The reasons listed on the Notice to end tenancy was the tenant or a person permitted on the residential 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.

The other cause listed was 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 the causes listed on the Notice, the landlord stated the following:

Details of the Event(s):

On March 23, 2023 Ms [redacted] engaged in a physical altercation with another tenant which resulted in the RCMP being called. This was also observed by another tenant and her young child which left that tenant feeling unsafe and the child traumatized.

In addition, Ms [redacted] signed a tenancy agreement addendum in November that stated, among other stipulations, as follows: "Going forward, I agree to be respectful with all other tenants at the [redacted] and all [redacted] employees and management". The addendum was a stipulation to rescind a previous 30 Day Eviction Notice.

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord's representative provided the following testimony and references to their documentary evidence:

The issues began in September 2022, when the landlord issued the tenant the first 1 Month Notice, which dealt with the allegations that the tenant had been verbally abusive to staff and violated the zero-tolerance policy of the tenancy agreement.

The first 1 Month Notice was ultimately withdrawn by the landlord due the tenant's promise to be respectful to staff, other tenants, and go to counseling. Another reason the 1 Month Notice was withdrawn was due to the fact the tenant has children and they had no other place to go.

In March 2023, the landlord received a call from the room services worker that there had been a physical altercation between the tenant and another tenant, which resulted in the police being called to the residential property.

Additionally, the tenant had, or allowed, drugs and drug paraphernalia in the rental unit, which was shown on the tenant's Facebook page. The tenant allowed, or had, guns on the site and there was gang activity associated with the tenant. There has been a lot of police presence as the result of the tenant's behaviour and associations.

Other residents of the building are concerned for their safety.

Landlord's agent, DW, testified to the following:

They were an outreach worker and a landlord representative. While they were not a direct witness to the altercation, they called the police to the building due to the reports being made to the landlord. In total, there have been 7 call-outs to the police.

In a written statement, the landlord submitted that the tenant reported to their support worker that their child was taken by another resident, without permission, and the child spent the night. The tenant then confronted the resident, they engaged in a physical altercation, which was witnessed by another resident and their child. The RCMP and Child Services were called, resulting in the tenant's children being placed with their grandmother. This altercation violated the landlord's zero tolerance for violence and this second 1 Month Notice was issued.

The landlord's relevant evidence included the first 1 Month Notice, a letter regarding the withdrawal of the first Notice, a photo of the drugs posted on Facebook, a witness statement, and a crime-free housing agreement signed by the tenant.

The tenant provided the following testimony and references to their documentary evidence:

The tenant was never verbally abusive to the staff. The police were on the premises to do a wellness check and due to the "incident".

The photo of the drugs indicates that they were stolen by another tenant, and denied the drugs were theirs. The police came just one time, and the people who owned the drugs were apprehended. They received a text message stating that someone was coming to their rental unit and they started banging on the door.

The other tenant involved in the altercation grabbed their hair and dragged them away. No punches were thrown, and they just removed themselves from the situation.

The tenant's relevant evidence included photos of their face and neck taken after the altercation, text messages, an unsigned letter of support, and a letter from their children's grandfather.

Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove the grounds on which the Notice is based, on a balance of probabilities, meaning the events as described by one party are more likely than not.

The Notice was issued to the tenants pursuant to section 47 of the Act. I have reviewed a copy of the Notice and find it complies with section 52 of the Act, as to form and content.

The landlord submitted that their residential property has zero tolerance for violence, stated in the tenancy documents, and that the tenant violated the policy when they engaged in a physical altercation with another tenant.

The tenant denied in participating in the physical altercation, stating they removed themselves when dragged out by the hair by then removing themselves from the situation.

I find the tenant's testimony conflicts with the tenant's evidence, and therefore leads me to conclude the tenant's evidence is unreliable. The photos show scratches, welts, red marks, and a bruise, which I find supports that the tenant did not simply remove herself, but was an active participant. I find this violates the terms of the tenancy, as the tenant agreed to a crime-free tenancy.

Additionally, I find the landlord submitted sufficient evidence that the tenant had a significant amount of illegal drugs in their rental unit. I was particularly influenced by the photo showing the drugs posted on the tenant's Facebook page. I find this violates the terms of the tenancy, as the tenant agreed to a crime-free tenancy.

Based on the above, I find the landlord's evidence demonstrates that the tenant has breached a material term of the tenancy agreement. The tenant's written notice to correct the breach was the first 1 Month Notice.

Due to the presence of the illegal drugs and the physical altercation, I also find the landlord submitted sufficient evidence that the tenant seriously jeopardized the safety or lawful right of another occupant or the landlord.

Given the above, I find the landlord has submitted sufficient evidence to prove at least 2 of the causes listed on the Notice.

As a result, I **dismiss** the tenant's application requesting cancellation of the 1 Month Notice, without leave to reapply, as I find the 1 Month Notice valid, supported by the landlord's evidence, and therefore, enforceable.

I uphold the Notice and I **order** the tenancy ended on the effective date of that Notice, or April 30, 2023.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I grant the landlord an order of possession of the rental unit effective and enforceable **two (2) days after service on the tenant.**

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

As to the tenant's monetary claim, the tenant did not specify an amount or provide details about their claim.

I dismiss the tenant's monetary claim, without leave to reapply.

I dismiss the tenant's request for recovery of the filing fee as the tenant did not pay a filing fee.

Conclusion

The tenants' application is dismissed, without leave to reapply, as I find the landlord's Notice valid, supported by the evidence and therefore, enforceable.

The landlord is granted an order of possession of the rental unit effective at 2 days after service on the tenant.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 24, 2023

Residential Tenancy Branch