



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AAT, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord allow access to the rental unit for the tenant and the tenant's guests; an order that the landlord comply with the *Residential Tenancy Act* or the tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I alerted the parties to the Rules of Procedure which indicate that multiple applications contained in a single application must be related, and the hearing focused on a One Month Notice to End Tenancy For Cause.

The landlord submitted that all evidence has been exchanged between the parties. The tenant did not dispute that, and all evidence has been reviewed; and the evidence I find relevant to the Notice is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy For Cause dated May 26, 2023 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 is payable on the 1st day of each month and there are no rental arrears. On July 1, 2021 the landlord

collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord lives in the upper level with 2 children.

The landlord further testified that on May 26, 2023 the landlord posted to the door of the rental unit a One Month Notice to End Tenancy For Cause, a copy of which has been provided for this hearing by the tenant. It is dated May 26, 2023 and contains an effective date of vacancy of June 30, 2023. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/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;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The tenant is the only person on the lease. The landlord started getting complaints from Block Watch and neighbours constantly approaching the landlord saying there is a person who comes out of the basement and sleeps in a van and in the landlord's carport or driveway. Block Watch also said there was a lot of partying going on with the tenant's boyfriend and then he falls asleep in his van, which the tenant admitted to. Police have been called, and there was a large police presence.

The parties had a conversation wherein the tenant told the landlord that the boyfriend's mom died and he doesn't feel comfortable there. The landlord told the tenant that the landlord is hiding from neighbours, and to let him sleep in the suite or behind a privacy gate, not on the street.

The tenant said that her boyfriend left, but the landlord was told that he still comes out of the basement. Groups of people would come, leave the gate open and let the landlord's dogs out. A person advised that the people were looking for a guy, and the landlord advised that no one by that name resided there. They argued that he lived there and scared the landlord.

On another occasion a fellow in an SUV was looking for the same person, and started to yell and swear at the landlord contending that the person lived there. As they left, they screamed the tires.

Someone threw a rock through the landlord's living room window and rear window of the landlord's car. The tenant didn't ask if the landlord was okay. Then the landlord saw the tenant's boyfriend and asked about the people coming, but before finishing, the tenant's boyfriend denied knowing anything.

The landlord has been off work since July. The landlord's kids are terrified, and the landlord's son won't sleep in his bedroom and runs away scared when he sees the tenant's boyfriend. The landlord's daughter has changed her room around, and the landlord is seeing a therapist. Safety and mental health are compromised. Video evidence has also been provided for this hearing.

With respect to illegal activity, the landlord testified that a group of people arrived on the rental property and someone stole the landlord's speaker. The landlord was listening to music, and the only people there were looking for the tenant's boyfriend. People randomly show up and leave. The landlord assumes that people think the tenant's boyfriend has drugs. A group of people intimidating and saying bad words to the landlord is considered illegal.

With respect to the extraordinary damage, the landlord testified that a big rock went through a 2-ply window and landed in the landlord's house. It was done by the tenant's boyfriend or someone else coming to look for him because the landlord threatened to call police.

The tenant testified that 2 months prior to receiving the notice to end the tenancy, the landlord attempted to evict the tenant for another reason, but not properly. The landlord sent the tenant a text message saying that her parents wanted to move in. That was ignored. The next month, the landlord copied and pasted the same thing, and again the tenant was not properly served.

The tenant doesn't know anything about the landlord's speaker and testified that no one was looking for the tenant's boyfriend at that time. The tenant's boyfriend does not live in the rental unit, but visits, and the tenant does not want to live with him, but prefers to live on her own.

Someone came to the rental home, and the landlord said someone was knocking, but the tenant didn't hear that, only the landlord outside yelling. Then the tenant heard the landlord knock and said someone was looking for a person, then apologized for over-

reacting. The tenant's boyfriend always leaves at the end of the night and hasn't been at the rental unit for at least over a month. The tenant is confident that her boyfriend did not throw a rock through the landlord's window or car. The tenant has viewed the landlord's video, which does not show anyone that the tenant knows. He was not arrested, and was not sneaking in or out. He works all day at a re-bar place, gets off at 5:00 or 7:00 p.m. then commutes home for about an hour. The tenant has never seen anyone that the tenant doesn't know, and doesn't know who the people are that the landlord talks about. The tenant lived with her boyfriend for about 13 years, and people may not know that they don't live together, but on Snap Chat they can see where he is.

The tenant had issues about accessing the laundry room which has been blocked. When the tenant asked the landlord about it, eviction notices started.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy For Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

Although I agree that the tenant is the only occupant noted in the tenancy agreement, considering the conflicting testimony, I am not satisfied that the tenant's boyfriend has moved in. The tenant testified that her boyfriend has not been at the rental unit for at least over a month. However, it is not for me to decide whether or not the landlord should no longer be concerned, but it is for me to determine whether or not the landlord had cause to issue the Notice at the time that it was issued.

Whether or not a person is charged or convicted of an offence does not indicate that illegal activity has or hasn't taken place. Unlike a criminal Court proceeding where the Crown must prove beyond a reasonable doubt that an offence has been committed, in a civil proceeding such as this, the landlord is required to prove on a balance of probabilities that illegal activity has taken place. In this case, the landlord believes that a person permitted on the property by the tenant stole the landlord's speaker. The landlord also testified that people randomly show up and leave, and a group of people intimidate the landlord. I am not satisfied that the landlord has established illegal activity or that the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the rental unit or property.

The *Residential Tenancy Act* does not allow a landlord to end a tenancy for disturbances to other neighbours, only other occupants of the rental building. I am satisfied, however, that the landlord has established that:

- The tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant, being the landlord's children, and the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant, being the landlord's children, and the landlord; and
 - put the landlord's property at significant risk.

Therefore, I dismiss the tenant's application to cancel the Notice.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession, which may be filed for enforcement in the Supreme Court of British Columbia.

Since the tenancy is ending, I dismiss the balance of the tenant's application.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to 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*.

Dated: September 26, 2023

Residential Tenancy Branch