



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH ASSOCIATION KOOTENAYS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for cause.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy set aside?

Background and Evidence

The parties agreed that this month to month tenancy started on February 15, 2013. The tenant pays a subsidized rent for this unit of \$375.00 per month due on the 1st of each month.

The landlord testified that the tenant was served a One Month notice to End Tenancy (the Notice) on December 05, 2014. This Notice has an effective date of January 31, 2015 and gave the following reasons to end the tenancy:

- 1) the tenant or a person permitted on the residential property by the tenant has*
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.*
- 3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The landlord testified that when entering into the tenancy agreement the tenant agreed to allow the landlord to conduct annual inspections of the rental; unit. On March 05, 2014 after written Notice of the inspection was provided the landlord and landlord's assistant arrived at the tenant's unit to conduct the inspection. The tenant answered the door and appeared dishevelled, disorientated and had deeply slurred speech. The tenant appeared to be intoxicated. The landlord testified that the tenant became argumentative and the landlord decided not to conduct the inspection as it was not safe or appropriate for the landlord and her assistant to enter the tenant's unit while the tenant was in this state. The tenant was sent a written warning letter indicating that the tenant had significantly interfered with the landlord's ability to conduct their business to ensure standards are maintained in the building.

The landlord testified that there have also been incidents with the tenant being intoxicated while in the common areas of the building. The tenant exhibited loud and aggressive behaviour and housing staff received reports from other occupants and the dining room chef on several occasions concerning the tenant's behaviour while

intoxicated. The landlord testified that this building is for marginalized tenants and these tenants have subsidized housing and are provided with a midday meal as part of their rent. This is provided in a common dining room. The tenant has caused significant disturbance and discomfort for other tenants trying to enjoy their meal with loud and intrusive behaviour. The landlord must ensure the quiet enjoyment of all tenants is respected. The landlord testified that the tenant was served with a written warning letter about these incidents. The landlord refers to their documentary evidence in the form of two letters from the chef in the dining room and a letter from another tenant.

The landlord testified that as part of the tenancy agreement manual, the tenants are allowed to drink in their own units but are not allowed to consume alcohol in common areas or to be intoxicated in common areas in a manner which causes a disturbance to other tenants. On page 17 of the manual it provides for all tenants to be considerate of fellow tenants and courteous in their interchange in the common areas. Rules with regards to substance usage and behaviour are in full effect in these areas.

The landlord testified that she has seen the tenant in the common areas under the influence of alcohol and the tenant has smelt of alcohol. The landlord referred to an incident on September 29, 2014. The landlord had closed the office but was on the premises distributing memos to other tenants. When the landlord came back down to the lobby the tenant was stumbling around due to intoxication. Later the landlord saw the tenant sitting in a chair asleep. The landlord tried to wake the tenant and called his name but there was no response. The landlord testified she could smell alcohol on the tenant but as he was not in any danger the landlord left him in the chair. On other occasions the landlord testified that the tenant has been so heavily intoxicated that he sways and stumbles when walking, vomit has been seen on his clothing and the tenant has exhibited slurred speech. The landlord testified that a further written warning letter has been sent to the tenant along with information concerning who to contact for help with addiction. The landlord testified that although they do not provide support for tenants they do try to help them and offer intervention first before going down the steps of eviction to try to help tenants maintain their tenancies. The tenant was also

recommended to provide information from his doctor if the tenant had medical issues; however, the tenant declined to do so. The warning letters were sent to the tenant on February 27, 2013, March 04, 2014 and October 02, 2014. The tenant was asked not to attend the dining room while intoxicated as this was a material breach of his tenancy agreement and has compromised the safety and wellbeing of the other 32 tenants.

The landlord seeks to have the Notice to End Tenancy upheld and orally requests an Order of Possession effective on January 31, 2015.

The tenant disputed the landlord's claims. The tenant testified that he spoke to the chef about the tenant's alleged behaviour and the chef said the tenant was always considerate and polite to others; the tenant sits with a friend or quietly on his own in the dining room. The tenant testified that he spoke to other tenants who also said the tenant was polite but as they had a conflict of interest they would not put this in writing or sign anything. The tenant testified that he is always well dressed and has not had vomit on his clothing. The landlord and a colleague saw the tenant and stared at him and then said the tenant was walking inappropriately. The tenant testified that sometimes he uses a walker to assist his walking or a cane. He did not get a letter from his doctor about his medical condition that makes him walk strangely as he did not want to involve the doctor.

The tenant refers to a positive conversation he had with the landlord in her office. At that time the landlord said the tenant should look like this all the time but also stated she could smell something on the tenant. The tenant testified it could not have been alcohol as he had not been drinking. The tenant testified that he does not drink excessively. He does have neck and back problems and the air in his unit makes the tenant ill which causes the tenant to vomit and suffer from insomnia. The tenant testified that these symptoms could make it look as if the tenant is intoxicated as he does have difficulty walking.

The tenant disputed that he enters the common areas intoxicated and stated he would not jeopardize his tenancy like that especially during the winter months. The tenant refers to the incident on September 29, 2014. The tenant testified that he had come into the building and was sitting in a common area reading a book. It was around 6.00 p.m. and the office was closed so the landlord could not have seen the tenant.

The tenant asked the landlord if the landlord is overstating the tenant's drinking because of experiences in the landlord's own life. The landlord responded absolutely not. The tenant asked the landlord why the landlord did not want the chef to come to the landlord's office to take part in the discussion. The landlord testified that the tenant wanted the chef to come and attest that the tenant was polite. The chef is a contractor and if he has something to add it is not appropriate or relevant as the landlord is the housing manager. It is not the chef's role to mitigate situations between management and tenants.

The tenant asked the landlord why the landlord now relies on letters written by the chef if the chef he has no right to speak. The landlord replied that the letters are witness statements that speak to the chef's observations but the chef cannot speak about protocol or tenancy agreements.

The landlord testified that the tenant had an opportunity to call the chef as a witness but has declined to do so. The landlord testified that when the tenant was served the Notice the tenant was told the Notice would be revoked if the tenant entered into an addiction treatment programme, but the tenant chooses not to do so.

The tenant responded that he advised the landlord that he was fully aware of the addiction programs as he had attended one with a friend; The tenant testified that if the tenant had an addiction he would have dealt with it.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I am satisfied from the evidence presented that there have been more than one incident concerning the tenant's behavior in the common areas and one incident where the tenant prevented the landlord carrying out their duty to inspect the tenant's unit. If the tenant had a medical concern that affected his walking and speech then it would have been circumspect for the tenant to have provided some sort of documentary evidence from a medical doctor to attest to this. As the landlord has testified that the tenant has smelt of alcohol on numerous occasions and has exhibited behavior associated with being under the influence of alcohol, on a balance of probability, I find the landlord's corroborating evidence more credible.

The tenant was given opportunities to protect his tenancy; however, forwent these opportunities to provide the landlord with evidence of a medical report or by seeking support from an addiction group and this has now placed the tenant's tenancy in jeopardy. I have also taken into consideration the warning letters provided to the tenant, the tenant choose not to comply with the letters concerning being intoxicated in the common areas as further letters had to be sent concerning this. The landlord has an obligation to all tenants residing in the building to protect their right to quiet enjoyment, which includes their enjoyment of the common areas. I find the reasons given on the One Month Notice are valid; I therefore find the tenant's application to cancel the Notice must be dismissed.

Section 55(1) of the *Act* provides that if a tenant's application to dispute a Notice to End Tenancy Due is dismissed, and the landlord makes an oral request for an Order of Possession at the hearing, then the director must issue an Order of Possession of the rental unit to the landlord.

The landlord has made an oral request for an Order of Possession for the rental unit at the hearing. The effective date of the One Month Notice is January 31, 2015; I therefore grant the landlord's oral request and issue an Order of Possession for that date.

Conclusion

The tenants' application is dismissed in its entirety without leave to re-apply.

The landlord has been issued an Order of Possession effective **on January 31, 2015** pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in possession of the rental unit and does not relinquish that possession to the landlord then the Order and may be filed in the Supreme Court and enforced as an Order of that Court.

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: January 15, 2015

Residential Tenancy Branch

