Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESCENT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 15, 2014 ("1 Month Notice"), pursuant to section 47;

The "landlord LT," the landlord's agent KM, and the tenant attended the hearing and were each given an opportunity to present their sworn testimony, to make submissions and to call witnesses.

The landlord LT confirmed that she is the general manager of the landlord company, CHS. The landlord's agent KM indicated that she was the administrative assistant for the landlord company, CHS. Both landlords indicated that they had authority to speak on behalf of the landlord company, CHS, at this hearing. CHS is the landlord company that manages this rental building and is named in the landlord's 1 Month Notice. During the hearing, the tenant requested an amendment to his application, to add the name of the company, CHS, as a landlord-respondent in this application. The landlord LT consented to this amendment on behalf of the landlord company CHS. In accordance with section 64(3)(c) and Residential Tenancy Policy Guideline 23, I amended the tenant's application to add the landlord company CHS, as a landlord-respondent in this application, a change which is now reflected on the front page of this decision. The landlord LT, her agent KM and the landlord company CHS are referred to collectively as "landlords" in this decision.

The landlord LT testified that she served the tenant with the 1 Month Notice on December 15, 2014, by posting it to the tenant's rental unit door. The tenant confirmed receipt of the 1 Month Notice on this date. In accordance with section 88 of the *Act*, I find that that the tenant was served with the 1 Month Notice on December 15, 2014. The tenant testified that he served the landlords with the tenant's application for dispute resolution hearing notice by leaving a copy in the landlord's mailbox. The landlord LT

confirmed receipt of the tenant's Application on December 17, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application.

The landlord LT testified that the tenant was served with the landlords' complete written evidence package on December 29, 2014, via registered mail. The landlords provided a Canada Post receipt and tracking number as proof of service, with their evidence. The tenant stated that he did not receive all of the landlord's written evidence because he was out of town and his daughter was only able to provide him with some of the evidence. The tenant indicated that he had not seen pages 20-30 of the landlord's 56 pages of evidence. The tenant stated that he had only provided one address for service to the landlords and this one address was where the registered mail was directed. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' complete written evidence package on January 3, 2015, the fifth day after its registered mailing.

The tenant testified that he served the landlords with his written evidence package on January 10, 2015. The landlord confirmed receipt of the tenant's written evidence on January 9, 2015, after business hours. The landlords stated that the evidence was not served 14 days before this hearing, in accordance with the RTB Rules of Procedure. The tenant confirmed that his written evidence was in response to the landlord's written evidence. The evidence was received by the landlords on January 9, 2015, six days before the hearing and it was a 1.5 page summary of the tenant's position at this hearing. The landlords indicated that they had reviewed the summary and I offered them the opportunity to have the tenant read out the information contained therein but they declined this opportunity. The landlords also responded to the tenant's written evidence, at this hearing, in their oral submissions. During the hearing, I advised both parties that I would accept the tenant's late evidence at this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the landlords were duly served with the tenant's written evidence, as declared by the parties.

Issue to be Decided

Should the landlords' 1 Month Notice be cancelled?

Background and Evidence

The landlord LT testified that this fixed term tenancy began on August 1, 2014 and is to end on January 31, 2015, with an option to extend this term if the parties agree. This fixed term extension provision was established as a result of a settlement agreement

made at a previous RTB hearing on July 23, 2014, the file number of which appears on the front page of this decision. Prior to August 1, 2014, a periodic tenancy was in place from May 1, 2013 to July 31, 2014. Monthly rent in the current amount of $449.00 is payable on the first day of each month; however, the tenant currently pays a subsidized rate of $320.00 each month. A security deposit of $224.50 was paid by the tenant in April 2013, which the landlords continue to retain. A written tenancy agreement was provided with the landlords' application. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice, with an effective move-out date of January 31, 2015, for the following reasons:

- the 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;
- the tenant has engaged in illegal activity that has, or is likely to:
    - damage the landlord's property;
    - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlords indicated that they did not wish to continue this tenancy and that it is to end on January 31, 2015, in any event, due to the fixed term tenancy and the settlement agreement reached at the previous RTB hearing. However, the landlord LT indicated that the 1 Month Notice was issued for different reasons and the effective end date was a mere coincidence.

The landlords indicated that the tenant has been smoking in his rental unit, contrary to his tenancy agreement, and that there were complaints from other occupants regarding this smoking. The landlords indicated that the tenant was smoking marijuana, which is an illegal substance, and it was affecting the health of other occupants in the rental building. The tenant denied smoking marijuana in his rental unit. The landlords produced a photograph, which they say is from the tenant's social networking webpage, and which they also say is a picture of him smoking marijuana in his rental unit. During the hearing, I advised the landlords that the photograph was so unclear, that it was difficult to determine whether there was even a person or a thing contained in the photograph because it was simply blurry black and white shapes on the page. The landlords stated that another occupant verified the photograph, stating that it was the tenant smoking marijuana in the rental unit, because the occupant recognized the tenant's rental unit and a table that the occupant had provided to the tenant for his

rental unit, was visible in the photograph. The landlords stated that the photograph was taken on December 28, 2014, which was after the 1 Month Notice was issued to the tenant on December 15, 2014.

The landlords also indicated that the tenant was extremely anti-social, had threatened to kill other occupants, had brandished a baseball bat against another occupant, and was gaining access to the rental building by propping doors open with objects because the tenant had given his keys to a friend. The landlords indicated that this is a building for seniors with disabilities, who require a safe environment. The majority of the complaints raised by the landlords, occurred between December 11 and 15, 2014.

The most serious issue raised by the landlords was a single incident which occurred in the common area of the rental building, on December 13, 2014. This incident, as per the landlords' evidence, involved the tenant threatening another occupant with a baseball bat, calling the police to report an assault with the other occupant, and telling other occupants that he was planning to attack other occupants with his baseball bat. The landlords provided another unclear social media posting, which they say is from the tenant's account, indicating that the tenant "beat a guy" for making a comment against him. However, the posting does not provide a specific name of the other person apparently affected or the specific location or address of the rental building. The tenant denied threatening or assaulting anyone with a baseball bat. He testified that on the day in question, a stronger, intoxicated occupant approached him and the tenant defended himself with a baseball bat but did not threaten anyone. The tenant stated that he called the police to report an assault by the other occupant, but that no action was taken. The tenant indicated that he left town because his family was worried for his safety and health.

The landlords provided their own notes to file as well as a number of anonymous letters which they say are from other occupants of the rental building, with the names and identity of the complainants edited out. The landlords stated that this was done for safety reasons, as these complainants are occupants in the rental building and are afraid of retaliation from the tenant.

The landlords testified that they provided a breach letter to the tenant on August 14, 2014, by leaving a copy in his mailbox. The tenant stated that he did not receive this letter and questioned why the landlords left it in his mailbox, rather than posting it to his door, as they did with other notices. The breach letter indicates that the tenant was engaging in "loud party and noise after 11:00 p.m." as well as "foul language and insults" to other occupants telling the tenant to quiet down.

The landlords stated that they did not notify the tenant about the complaints against him after August 2014, because there was no point in doing so, given that they had already spoken to him in the past and his behavior was not corrected. They recounted previous RTB hearings in July and December 2014, where they discussed various smoking and other issues with the tenant. The landlords indicated that they did not provide breach letters to the tenant in September, October, November or December 2014. The tenant stated that he left town in December 2014 and the landlords were aware of this fact. The landlords indicated that they did not approach the police or take other action against the tenant, because the tenant was out of town.

Analysis

While I have turned my mind to all of the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

1 Month Notice

According to subsection 47(4) of the Act, a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant received the 1 Month Notice on December 15, 2014, and filed his Application on the same date. Therefore, he is within the time limit under the *Act*. The onus, therefore, shifts to the landlords to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

The landlords provided a number of anonymous letters as well as their own notes, with identities of the complainants removed. The landlords offered to produce unedited letters showing the authors' names to me, after consulting with these other occupants, after the hearing. The landlords stated that they would not be able to produce any unedited letters to the tenant after the hearing, as there are safety issues involved. As the tenant is required to be served with all of the evidence that the landlord intends to rely on for this hearing, I advised the landlords that I was not prepared to accept any unedited letters from them, after this hearing.

I do not attach any weight to the letters from unnamed individuals or the landlords' notes regarding these unnamed individuals, entered into written evidence by the landlords. The Supreme Court of B.C. held in *Stelmack v Commonwealth Holding Co. Ltd*, 2013 BCSC 342, that anonymous letters may not be relied upon owing to the high standard of procedural fairness owed to tenants facing a notice to end tenancy for cause.

Accordingly, without the authors of these letters in attendance at this hearing and without the names of the authors having been supplied by the landlords, there would be a fundamental denial of natural justice if I were to attach weight to allegations from unnamed occupants of this rental building. The tenant is entitled to know the case against him so as to enable him to address the landlords' allegations. The tenant stated that he did not have notice of these complaints against him because he was not aware of the people making the complaints, as they were anonymous. In accordance with the above Supreme Court of B.C. decision, I find that the landlords' notes regarding anonymous complainants and the letters from anonymous complainants are inadmissible for this hearing.

The landlords did not provide any breach letters or advise the tenant of any complaints against him, from September to December 2014, because they felt that it would make no difference. They provided a single complaint letter in August 2014, which the tenant says he did not receive. The tenant indicated that he had not spoken to management since they assumed control of the rental building. The tenant did not have notice of the complaints against him in order to correct his behavior or provide the landlords with more information regarding the events.

The landlords have not provided sufficient evidence that the tenant engaged in any illegal activity at the rental unit. As mentioned earlier, I am not considering the anonymous letters submitted by the landlords. The landlords did not submit any evidence that the tenant was smoking marijuana in his rental unit. The tenant denies smoking marijuana in his rental unit. The tenant indicated that another occupant smoked with his door open and that was likely the source of the landlords' complaints. The tenant stated that he made a joke to the landlord regarding smoking marijuana in his rental unit, but that there was no truth to the joke. As mentioned above, I find that the photograph from the tenant's social media webpage is unclear and no person is recognizable performing any activities. The photograph was also said to be posted after the landlords issued the 1 Month Notice to the tenant. Even if the tenant was smoking marijuana, any illegal activity would require a significant impact on the landlord, another occupant, or the landlord's property. The landlords did not provide documented evidence of any impact.

RTB Policy Guideline 32 states the following with respect to meeting the test for proving an illegal activity and refers specifically to smoking marijuana cigarettes (emphasis added):

> *The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by*

> *providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.*
> *…*
> ***For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.***

No medical records or letters were provided by the landlords to demonstrate the health or safety concerns of any occupants in the building, with respect to the tenant's alleged marijuana use. No witnesses testified at this hearing regarding the tenant's alleged illegal behavior. No police reports, criminal records or police witnesses were produced at this hearing, by the landlords. The landlords did not alert the police of this alleged illegal behavior because they say that the tenant was out of town at the time. Although the landlords stated that the tenant's marijuana smoking has been ongoing for some time and has seriously affected many other occupants in the rental building, they did not contact the police to deal with the matter. Accordingly, I find that the landlords have not met their burden of proof to show that the tenant engaged in **illegal** activity that has or is likely to damage the landlord's property or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

I find that the landlords have not met their burden of proof to show that the tenant or an occupant permitted on the property by the tenant, significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or lawful right of another occupant or the landlord. No witnesses were produced by the landlords at this hearing, to substantiate the landlords' claims. No medical documentary evidence was produced by the landlords to show that the health of other occupants was seriously jeopardized by the tenant.

The landlords stated that the tenant engaged in name-calling, foul language and loud noises. The tenant denied these allegations. The tenant stated that he did not own a radio or television, so the complaints relating to loud music were untrue and not from his rental unit. The majority of complaints are from mid-December 2014, a few days before the 1 Month Notice was issued to the tenant, rather than over a lengthier period of time. The landlords say that the tenant's behavior dated back to August 2014; however, the tenant was not provided notice of any complaints, as the landlords did not find it necessary to discuss these matters with the tenant or alert him to his alleged inappropriate behavior.

The one single incident which the landlords say gave them cause to issue the 1 Month Notice, is an incident involving the tenant, another occupant and a baseball bat. However, as per the landlords' evidence, the other occupant involved in this altercation, took the baseball bat away from the tenant and pinned him to the ground. Further, the police were called by the tenant in order to report the other occupant's behavior. The tenant indicated that he was injured in this altercation and fled town out of fear for his own safety. Given the above, the tenant may have been interfered with or disturbed by the other occupant and potentially had his health or safety jeopardized by this other occupant, rather than the reverse situation. Further, the landlords have not established a pattern of behavior related to the above incident to justify any "significant" interference or "unreasonable" disturbance. As such, I do not find that this one single incident establishes significant interference, unreasonable disturbance or serious jeopardy to health, safety or a lawful right.

For the above reasons, the tenant's application to cancel the landlord's 1 Month Notice, is allowed. The landlords' 1 Month Notice, dated December 15, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlords' 1 Month Notice, is allowed. The landlords' 1 Month Notice, dated December 15, 2014, is cancelled and of no force or effect. This tenancy continues until it is 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: January 23, 2015

Residential Tenancy Branch