Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the Act) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

At the hearing, the landlord's agent made an oral request for an order of possession in the event I found that the 1 Month Notice was valid.

Preliminary Issue – Attendance

The landlord was represented at the hearing by its two agents: TS and AP. The agent TS (the agent) provided testimony in support of the 1 Month Notice and the landlord's oral request for an order of possession.

The tenant appeared shortly after the hearing commenced, but disconnected shortly thereafter. I waited for the tenant to reconnect, but she did not reconnect with the hearing. I asked her advocates to attempt to contact tenant, but the advocates were unsuccessful in having the tenant reconnect with the hearing.

The tenant's four advocates remained on the line for the duration of the hearing. The tenant's advocates were provided with an opportunity to cross examine the landlord's agent TS on her evidence. The tenant's advocates provided submission in support of the tenant's application.

Preliminary Issue – Landlord's Evidence Deemed Service Prevails

The landlord submitted a package of evidence to the Residential Tenancy Branch on 23 November 2015. The landlord's agent stated that this evidence package was served to the tenant by mail on 19 November 2015. The landlord's agent provided me with a Canada post tracking number for the mailing. The agent stated that Canada Post first attempted delivery on 23 November 2015, but was not successful in reaching the tenant.

The tenant stated that she had dropped her wallet containing the delivery receipt and that someone had taken it. The tenant stated that she was unable to pick up her registered mail as a result. The tenant did not provide any supporting evidence for this reason.

Paragraph 90(a) of the Act provides that service of a document by mail is deemed served on the fifth day after its mailing. Pursuant to the Court's decision in *Atchison v British Columbia*, 2008 BCSC 1015, this presumption is rebuttable on proper evidence.

The tenant has provided a reason why she was unable to retrieve the evidence, but this reason is not backed up with any supporting evidence. The tenant's excuse without strength of evidence cannot rebut the presumption in paragraph 90(a) of the Act. I find that the tenant was deemed served with the tenant's evidence on 24 November 2015, the fifth day after its mailing.

In accordance with Rule 3.15 of the *Rules of Procedure*, the landlord's evidence was served within the prescribed time limits. As such, the evidence was properly before me. I informed the parties of this decision at the hearing. In order to lessen the prejudicial effect of this decision on the tenant, I asked the landlord's agents to thoroughly describe any of the new documents that were referred to in testimony.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

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

This tenancy began 3 March 2015. The parties entered into a tenancy agreement dated 24 February 2015. Monthly rent of $375.00 is due on the first. The tenant's rent is paid directly from the Province of British Columbia.

There have been numerous issues within this tenancy. The most pertinent are set out below:

- 21 May 2015: At approximately 1350, the tenant was observed yelling in the building. I was provided with a written statement by CS detailing the incident.
- 17 June 2015: At approximately 1453, the tenant was observed partially covering her upper body with a small towel in the common areas of the residential property. The tenant was asked to return to her rental unit. A conflict resulted.
- 18 June 2015: The tenant was warned about the conduct of 17 June 2015. I was provided with a letter that documents the warning. In particular, the tenant was warned that she was not to cause noise or interference that is disturbing to the comfort, quiet enjoyment and safety of other occupants.
- 17 July 2015: The tenant's guest was observed knocking on other occupants' doors between 0300 and 0400. I was provided with an excerpt from the landlord's log regarding a complaint received by another occupant.
- 1 August 2015: The tenant was involved in a verbal altercation with another occupant. It was not clear from the incident report if the tenant was the aggressor.
- 11 August 2015: The tenant was observed screaming and arguing with a male outside the entrance to the building. The male was observed running away from the tenant. The tenant had a knife and a crowbar in her hand. This was in relation to a financial dispute. The tenant had taken the male's personal items until he settled an alleged debt. The staff reviewed the security camera video and observed the tenant chancing the man wielding the knife and crowbar. I was provided with stills of the security camera footage. The tenant is clearly seen to be holding a knife and crowbar. Later, the tenant was observed to be very upset and was yelling and kicking the elevator.
- 14 August 2015: The tenant's guest verbally assaulted and threatened to hit another occupant in the head with a brick. The guest and tenant were observed to be yelling and swearing at the landlord's employees. I was provided with a written statement from the landlord's log.
- 20 August 2015: The tenant and another occupant were involved in an altercation. The tenant was observed pushing another occupant out of the elevator. I was provided with a copy of the incident reports for this event.
- 22 August 2015: The tenant was yelling from the rental unit to a person on the street. Other occupants called the landlord to complain about this conduct.

- 23 August 2015: The tenant's guest was knocking on doors of other occupants. This guest had the tenant's access fob. The same day the tenant was observed threatening another occupant with a crowbar. I was provided with incident reports for both events.
- 27 August 2015: The tenant was given a final warning letter that included the 1 Month Notice.

On 27 August 2015 the landlord issued the 1 Month Notice to the tenant. The landlord served the 1 Month Notice on 27 August 2015 by posting the notice to the tenant's door. The 1 Month Notice set out an effective date of 30 September 2015. The 1 Month Notice set out that it was given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- the tenant has engaged in illegal activity that has, or is likely to:
    - adversely affect the quite enjoyment, security, safety or physical well-being of another occupant or the landlord; and
    - jeopardized a lawful right or interest of another occupant or the landlord.

The tenant applied to dispute the 1 Month Notice on 4 September 2015.

The agent testified to various conduct after the issuance of the 1 Month Notice. The conduct shows a continuing pattern of problematic conduct by the tenant and her guests.

The agent testified to various violations of the pest control protocol and guest policy.

The advocates did not ask any questions of the agent by way of cross examination.

The tenant's advocates made submissions on the tenant's behalf. The tenant submits that the bad conduct alleged is merely "allegations"; however, no evidence contradicting the landlord's agent's sworn testimony was provided and the advocates elected not to challenge the agent's evidence by way of cross examination.

The tenant submits that the landlord provides supportive housing, but has been failing to provide the tenant with support. The tenant submits that evidence provided by the agent is hearsay. The tenant submits that the system is failing her. The tenant submits that the landlord should have communicated with the tenant's support workers earlier.

The tenant submits that the warning letter accompanied the end to tenancy and that this is ambiguous.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

On 27 August 2015, the landlord served the tenant with the 1 Month Notice along with the "final warning" letter. The 1 Month Notice set out that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- the tenant has engaged in illegal activity that has, or is likely to:
    - adversely affect the quite enjoyment, security, safety or physical well-being of another occupant or the landlord; and
    - jeopardized a lawful right or interest of another occupant or the landlord.

Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

As several of the issues alleged by the landlord relate to noncompliance with the guest and pest control policies, I asked the tenant's advocates and landlord's agents for submission the application, if any, of *Atira Property Management v Richardson*, 2015 BCSC 751. The parties did not provide submissions.

In my consideration of the 1 Month Notice, I have given no weight to any of the alleged violations of the pest control protocol or guest policy or the conflicts that resulted from attempts at enforcing these policies. Further, I have not considered the allegation regarding the tenant appearing partially unclothed in the lobby of the residential property as women are permitted to appear topless in public in British Columbia.

Notwithstanding the narrow subset of conduct that I am examining, the tenant's conduct in the course of this tenancy is not acceptable and contravenes subparagraph 47(1)(d)(i) of the Act. On the basis of the sworn and uncontested testimony of the landlord's agent, there is ample evidence to support the 1 Month Notice for the reason of significantly interfering with or unreasonably disturbing another occupant or the landlord. In particular, the tenant and her guests have threatened other occupants of the residential property with violence (including threats with weapons), the tenants guest was observed early in the morning knocking on doors of other occupants (which led to a complaint by one of the disturbed occupants), and the tenant has been the subject of complaints regarding yelling in the residential property from other occupants and the landlord.

The tenant made submissions about the hearsay nature of the landlord's evidence.

Section 75 of the Act deals with the admissibility of evidence in these proceedings:

> The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be
> (a) necessary and appropriate, and
> (b) relevant to the dispute resolution proceeding.

I do not understand "necessary" in this context to be equivalent to "necessary" in the context of the principled approach to the hearsay rule. In this case, it is necessary and appropriate to admit the evidence as it provides the landlord with evidence regarding the behaviour of tenant, which is relevant for the purpose of considering the tenant's application to cancel the 1 Month Notice. Further, the purpose of this rule is to allow for increased flexibility and efficiencies in the administrative law context. Allowing one agent of the landlord to provide the evidence provides for a more streamlined and efficient process.

I agree that from an evidentiary perspective it would have been preferable to have specific occupants and agents of the landlord called as witnesses so that they could have provided sworn testimony and could have been cross examined on their evidence; however, the tenant's advocates did not elect to cross examine the agent on the evidence she provided and the tenant did not provide any testimony of her own that contradicts the events as set out by the agent. As a result of this, although I would generally assign hearsay evidence less weight against sworn testimony that was not hearsay, the agent's evidence is completely uncontradicted and is sufficient to meet the landlord's burden of proving on a balance of probabilities that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Act applies to a wide variety of residential tenancies in the Province including those in supportive housing environments. The majority of the tenant's submissions focused on the special nature of this particular tenancy in that the residential property and the landlord are specifically created for the purpose of housing persons that are hard to house and may have mental health issues including addiction. I agree with this submission insofar as the context may affect the actual conduct that rises to the level of "unreasonable"; however, even with a more contextual understanding of the tenant's conduct, I find that the landlord has still met its burden to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In particular, the violent acts and acts involving weapons by the tenant and her guests are particularly concerning.

Whether or not the landlord is providing the supportive services promised to the tenant or providing those services adequately is beyond the scope of the Act and outside of my jurisdiction.

I understand that the tenant has extensive personal challenges, but the tenant's conduct leaves me no option but to end this tenancy. On the basis of subparagraph 47(1)(d)(i), the 1 Month Notice is valid. As this reason for cause substantiates the 1 Month Notice, I need not consider the remaining reasons as set out in the notice.

The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply. The landlord is entitled an order of possession effective 31 December 2015.

Conclusion

The tenant's application is dismissed.

The landlord is provided with a formal copy of an order of possession effective 31 December 2015. Should the tenant(s) fail to comply with this order, this order may be filed 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 subsection 9.1(1) of the Act.

Dated: December 18, 2015

Residential Tenancy Branch