



Dispute Resolution Services

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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*) to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was represented by an advocate who said that they had full authority to act as the tenant's agent in this matter.

As the tenant's agent (the agent) confirmed that the tenant was handed the 1 Month Notice by the landlord on May 25, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the agent by registered mail on June 4, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received and reviewed one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(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

The agent gave undisputed sworn testimony that the tenant first moved into this rental unit in a rental building by way of a three-month fixed term tenancy agreement on

December 1, 2017. After the end of the first fixed term, the parties entered into a second three-month fixed term tenancy to cover the period from March 1, 2018 until June 30, 2018. The landlord entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement) for this second fixed term tenancy between the parties. Monthly rent is set at \$870.00, payable in advance by the first of each month by a third party. There is a \$435.00 security deposit for this tenancy, paid on or about December 1, 2017.

The landlord entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by June 30, 2018, which also coincided with the date identified in the most recent Agreement between the parties, the landlord cited the following reasons for the issuance of the Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

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 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;...*

Both parties agreed that the landlord accepted a payment from the tenant's third party rent provider for the month of July 2018, which allows the tenant to occupy the rental unit until at least July 31, 2018. Both parties confirmed that the tenant was aware that the landlord's acceptance of the payment for July 2018, did not reinstate this tenancy and that the tenant knew that the landlord continued to seek an end to this tenancy on the basis of the 1 Month Notice issued on May 25, 2018.

At the hearing, the landlord testified that they were unaware of any illegal activity that had been undertaken at the rental unit by the tenant or his guests. The landlord said that there were a number of police files regarding this tenancy, primarily involving the removal of people from this rental property by the police. Since the landlord was unable to identify any specific illegal activity that has been happening at the rental unit, the

landlord confirmed that the reasons cited in the last two of the landlord's reasons stated in the 1 Month Notice were in error. I proceeded to hear sworn testimony and consider written and photographic evidence regarding the first four of the reasons identified in the landlord's 1 Month Notice, as noted above.

The landlord's written evidence included a three-page description of the activities that were happening on the rental premises as a result of this tenancy. This description included concerns that there was excessive noise and partying at the rental unit, particularly during the evening hours, which had resulted in multiple calls to the police, many of them from the tenant himself to remove people from his living unit. This description also noted that the tenant and/or those allowed on the rental unit and rental property by the tenant were smoking, contrary to the rules established for this building. In this document, the landlord also alleged that there were other occupants living in the tenant's rental unit.

The landlord also entered into written evidence a copy of a document signed by an official with a society that provides assistance to individuals with mental health issues in which that official confirmed that the tenant told him and the landlord at the rental building that someone else was living in the rental unit with the tenant. The official noted that the landlord informed the tenant on that occasion that the tenant's Agreement only allowed the tenant to live in the rental unit and that no one else was permitted to live there. The official said that the landlord advised him that the landlord had provided similar reminders to the tenant in the past, to no avail. The landlord's three-page written document also maintained that several people had been staying with the tenant at his rental unit for over a week. The landlord confirmed this information in his sworn testimony at the hearing.

The landlord also provided written evidence and sworn testimony that the landlord and another tenant in this building were threatened with physical violence by someone allowed on the rental premises by the tenant, whom the landlord maintained was the tenant's brother. The landlord provided written evidence and sworn testimony that this individual was subsequently jailed by the police.

The landlord entered into written evidence a copy of a warning letter issued to the tenant, advising him that his behaviours were such that the landlord would not consider extending his existing fixed term tenancy beyond the end date identified in the Agreement. In this letter, the landlord noted that a number of verbal warnings had been issued to the tenant and that this was the tenant's last and final warning to take measures such this tenancy could continue until the stated end date for the tenancy,

June 30, 2018. The letter required the tenant to prevent the tenant's brother from gaining access to this rental property again, to remove all guests who were living with him at his rental unit, and to discontinue the parties and loud music that was happening 24 hours a day.

The landlord also suspected that a fire that was set at the building resulted from either the tenant's actions or from the actions of those allowed on the rental property by the tenant.

The landlord provided written evidence and sworn testimony that the tenants in at least two of the other units in this building vacated their premises because of the behaviours and actions that were occurring at the tenant's rental unit. The landlord also maintained that the tenant was at least partially responsible for allowing others who had no reason to access the rental building with keys that enabled them to do so. The landlord said that the organization that the agent represented had been attempting unsuccessfully to convince the tenant that he needed to obtain treatment for the tenant's drinking issues. The landlord said that this building was not equipped to deal with the problems that had surfaced as a result of this tenancy.

At the beginning of this hearing, the agent testified that the tenant was "very unwell" and could not participate in the hearing himself for that reason. The agent testified that the tenant is suffering from a serious gastrointestinal problem that will require surgery soon.

The agent confirmed that most of the written and photographic evidence submitted by the agent on the tenant's behalf was designed to demonstrate that the landlord's property was not in any significant danger, one portion of the landlord's 1 Month Notice. Much of this evidence was photographs of the inside of the rental unit. Some of this evidence included screenshots of text messages between the landlord and the tenant.

At the hearing, the agent testified that as part of her work, she conducts daily checks of this rental building where a number of her clients reside. The agent maintained that the landlord's evidence regarding the fire was inconclusive and that nothing the tenant has been doing should be sufficient to end his tenancy for cause. The agent admitted that the tenant drinks alcohol on a regular basis, but that this is not a banned substance. The agent testified that the landlord is mistaken regarding the allegations about the tenant's brother because the tenant has no brother.

The agent also testified that there may have been some confusion caused by the tenant's limited English language skills regarding the identity of the person the landlord

believes is living with the tenant. The agent said that in actuality this person is living in another nearby location with his wife, but visits the premises regularly to check in the health of the tenant.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, screenshots, miscellaneous letters and e-mails, 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.

In this case, I heard two very different accounts as to the tenant's behaviours and the reasons cited by the landlord for ending this tenancy for cause. While the landlord provided first-hand knowledge and testimony, the tenant did not attend and provided no written statement, instead relying solely on the tenant's agent to dispute the 1 Month Notice. As opposed to a more typical tenancy where a tenant's advocate or agent would have little first-hand knowledge of the allegations, I accept that the agent's daily visits to the rental property enable the agent to make observations regarding some of the allegations made by the landlord.

While the agent provided some explanations for some of the evidence and sworn testimony presented by the landlord, I find that there were many areas of the landlord's allegations that were beyond the agent's direct knowledge and for which the agent did not provide any comments. For example, the tenant's agent had little if any response to the landlord's allegations regarding smoking, which was not allowed as per the terms of the Agreement, noise, loud music and partying, which the landlord described as ongoing night and day. On other issues, the agent questioned some of the details of the landlord's submissions, but did not question the substance of the landlord's allegations. For example, the agent questioned whether the person who threatened the landlord and another tenant was in actuality the tenant's brother. The agent did not dispute that someone allowed on the premises by the tenant had threatened the landlord and another tenant, and that person was subsequently incarcerated by the police for these actions. Similarly, I find that the agent's testimony regarding the true living arrangements of one of the people who the landlord maintains was residing with the tenant on the premises does not adequately address statements made by the landlord and entered into written evidence by the landlord that there have been a number of people who have been living in the rental unit with the tenant during the course of this tenancy.

Although I have given careful consideration to the tenant's submissions and the sworn testimony supplied by the agent, I find on a balance of probabilities that the landlord

provided the most direct sworn testimony and written evidence regarding this matter. I find that the landlord is in a much better position to provide first hand testimony regarding many of the issues in dispute regarding this tenancy. I am satisfied that adequate warnings were given to the tenant to discontinue the noisy parties, unauthorized occupants and other problems that ultimately led to the landlord's issuance of the 1 Month Notice. While the agent has given sworn testimony calling into question some parts of the 1 Month Notice, I find that the agent's testimony and very limited written evidence failed to adequately address and refute far too many of the important reasons cited by the landlord for issuing the 1 Month Notice. Without direct sworn testimony or even a written statement from the tenant and without any corroborating testimony from witnesses or other tenants speaking on the tenant's behalf, the agent could only attest to her knowledge of the circumstances at this rental building, which I found were understandably less complete than that of the landlord. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice.

In reaching this decision, I have also given careful consideration to the fact that the landlord's written evidence includes considerable documentation that either lacks dates or was not created until after the 1 Month Notice was issued. For the most part, the landlord's task is to demonstrate to the extent required that the situation as it existed on the date of the issuance of the 1 Month Notice, May 25, 2018, constituted sufficient grounds to end this tenancy for one of the reasons cited on that Notice. While somewhat concerned that the landlord has not limited evidence to that which existed at the time of the issuance of the 1 Month Notice, I am nevertheless satisfied that on a balance of probabilities the behaviours cited in the written evidence submitted constituted an ongoing pattern of behaviours that have continued basically unabated during the latter part of this tenancy. While the landlord may not have obtained documentation for some of these incidents prior to May 25, 2018, there is little before me to suggest that the situation as it existed prior to May 25, 2018, with respect to noise, partying, smoking, allowing additional people to use the rental unit as their residence, and threatening behaviours varies in any significant way from what has transpired even after the landlord issued the 1 Month Notice. Rather, there seems to have been a relatively uninterrupted series of actions and behaviours that existed prior to the issuance of the 1 Month Notice and have continued even until shortly before this hearing.

Section 47(1) of the *Act* reads in part as follows:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(c) there are an unreasonable number of occupants in a rental unit;

(d) 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,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;...

Once a tenant applies to cancel a 1 Month Notice within the time limits established in section 47 of the *Act*, the burden of proof rests with the landlord to demonstrate on a balance of probabilities that at least one of the reasons cited on the 1 Month Notice constitute sufficient grounds to end the tenancy for cause.

Section 55(1) of the *Act* reads as follows:

55 *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the tenant was served with 1 Month Notice and that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*. This section states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

As I have dismissed the tenant's application to cancel the 1 Month Notice, and the landlord's 1 Month Notice meets the requirements of section 52 of the *Act*, I issue the landlord an Order of Possession to take effect by 1:00 p.m. on July 31, 2018, the last date when the landlord's acceptance of the payment on the tenant's behalf enables the tenant to occupy the rental unit.

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on July 31, 2018. Should the tenant and any other occupant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 22, 2018

Residential Tenancy Branch