



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANKERO HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On October 3, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for Cause, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

Preliminary Matters

The Landlord and Tenant attended the hearing and the Tenant immediately stated that he would like to request an adjournment for the purposes of scheduling an in-person hearing, instead of a conference call. The Tenant stated that he is hard of hearing.

The Landlord stated that he has never had a problem speaking with the Tenant and that he, the Landlord, was ready to proceed with today’s hearing.

Residential Tenancy Branch Rules of Procedure 6.4 addresses how a party may request a hearing to be held in a specific format:

“A party may submit a request that a hearing be held in a format other than telephone conference call. An applicant must submit such a request in writing to the Residential Tenancy Branch directly or through a Service BC Office with supporting documentation within three days of the notice of hearing being made available by the Residential Tenancy Branch. A respondent must submit such a request in writing with supporting documentation within three days of receiving the Notice of Dispute Resolution Proceeding or being deemed to have received the Notice of Dispute Resolution Proceeding.”

In this case, I find that the Tenant failed to provide sufficient evidence to prove that he submitted a request for an in-person hearing to the Residential Tenancy Branch. I also noted that the Tenant chose not to have an advocate, or an agent represent the Tenants during this hearing. I was also able to have a conversation with the Tenant and found that he was easily able to understand and respond to my comments and questions. I advised both parties that I would be proceeding with today’s hearing via conference call.

The Tenant then stated that he has not been feeling well over the last three days and has been waiting to go to the hospital, but has held off, as he wanted to attend this hearing. The Tenant then mentioned that he thought he was having the “beginning of a stroke”. I said to the Tenant that he should go to the hospital and the Landlord stated that he could call 911 for the Tenant and have the manager of the residential property attend to the Tenant’s location. The Tenant stated that he has arranged for a neighbour to take him to the hospital. When the Landlord asked which neighbour would be driving the Tenant, the Tenant yelled at the Landlord and hung up the phone.

The Landlord stated that he would have the manager of the residential property attend to the Tenant’s rental unit to determine if he needed assistance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant chose to leave the conference and failed to arrange a representative to attend, the hearing was conducted in their absence and the Application was considered along with the testimony and evidence as presented by the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the One-Month Notice to End Tenancy for Cause, dated September 17, 2018 (the “Notice”) be cancelled, in accordance with Section 47 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession for he rental unit, in accordance with Section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord presented the following undisputed testimony:

The one-year, fixed term tenancy began on November 1, 2012, and continued on as a month-to-month tenancy after October 2013. The current monthly rent is \$1,910.00 and the Landlord holds a \$875.00 security deposit.

The Landlord stated that there have been troubles with Tenant PH over the last few years and that he has not been able to get along with the other tenants in the building. The Tenant has a history of confronting the tenants in the unit above his about alleged excessive noise.

The Landlord submitted letters from the neighbours of the residential property that documented the Tenant's confrontations with them, described how the Tenant refuses to leave them alone and examples of how he will knock on a neighbour's door for ten or more minutes, getting louder and louder until someone answers. A letter also documented an incident where the Tenant attended a neighbour's mosque to complain to the religious leader about the neighbours' behaviour in the residential property. The police have been called on numerous occasions regarding the Tenant's harassing behaviour.

In August of 2017, the Landlord was fined by the Strata of the residential property as a result of the Tenant causing a nuisance and interfering with the rights of other occupants.

The Landlord stated that he has spoken to the Tenant about his actions and warned the Tenant that he needed to stop his abusive behaviour or that it could affect his tenancy.

In a letter dated August 27, 2018, the Strata Manager wrote the Landlord about the harassing behaviour of the Tenant towards the building manager and furthermore, that the Tenant has been approaching prospective tenants for the residential property and telling them what a "bad place" it is and advising them not to rent or purchase a unit within the strata.

The Landlord stated that the Tenant has been warned over the years as to his confrontational ways and that he has been disturbing the other tenants in the building; however, the Tenant's actions seem to be getting worse. The Landlord is requesting an Order of Possession for the rental unit; yet, also acknowledged that the Tenant may require some time to find a new rental unit and stated that, if an Order of Possession was granted, that it could be for the end of February 2019.

Analysis

The Landlord testified that he served the Notice on September 17, 2018, by sending it to the Tenants via registered mail. The move-out date on the Notice stated October 31, 2018. The reasons stated on Page 2 of the Notice indicated that it was served as the tenant or a 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.

The standard of proof is based on the balance of probabilities. If I find that the reason set out in the Notice is valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I accept the Landlord's undisputed testimony that the Tenant has been unreasonably disturbing other occupants of the residential property through his intimidating actions; by continually bothering occupants by confronting them in the hallways and knocking on their doors; by attending the religious places of tenants to complain about them; and, by interfering with the management's responsibilities to rent out units in the property. As such, I find that the Notice was issued for valid reasons, in accordance with Section 47 of the Act.

Upon review of the Notice, as presented by the Landlord, I find that the Notice complies with Section 52 of the Act.

As the Tenant failed to provide sufficient evidence to cancel the Notice, I uphold the Notice and dismiss the Tenant's Application to cancel the Notice.

In accordance with Section 55 of the Act, I grant an Order of Possession to the Landlord with an effective date, as requested by the Landlord, of February 28, 2019.

As the Tenant was unsuccessful with their Application, I do not award compensation for the cost of the filing fee.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on February 28, 2019 at 1:00 p.m. This Order should be served on the Tenants as soon as possible. Should the Tenants 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: November 15, 2018

Residential Tenancy Branch