



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 the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47 (the One Month Notice);

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

The tenant's application was filed within the time period required under the Act.

Issues

Should the landlord's One 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 of the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

The tenancy began on February 1, 2010. The rental unit is an apartment building. The tenant has been in a wheelchair since the beginning of the tenancy and is the only tenant in the building in a wheelchair.

The landlord served the tenant with a One Month Notice on October 5, 2018 with an effective date of November 30, 2018. The landlord argues the One Month Notice

should be upheld on the grounds that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk and caused extraordinary damage to the property.

The landlord submitted evidence in the form of three previous caution notices issued to the tenant. The notices were all in regards to incidents reported by other occupants of the building.

The first was in regards to an incident dated July 4, 2016 by which it was reported that the tenant was trying to pop open fire doors without turning the door handles causing significant damage to the fire doors and apartment door.

The second was in regards to an incident dated May 26, 2018 by which it was reported that the tenant was passed out drunk in the hallway area at 5:45 p.m. It was reported that the tenant's pants were down to his ankles and his private area was exposed. There was also urine on his wheelchair and the hallway carpet. A friend of the tenants who also resides in the building later helped him in and cleaned up the urine. The landlord had to get the carpet professionally cleaned due to the urine smell.

The third was in regards to an incident dated August 31, 2018 by which it was reported that the tenant was again passed out outside the laundry room area around 6:00 p.m. There was a big hole in the wall and scrapes from the tenant's wheelchair. It was also reported that there was again urine on his chair and the carpet.

The landlord also submits that a similar incident was reported again on October 4, 2018. The landlord submitted witness statements from two other occupants in regards to this incident. It was reported that the tenant was outside another tenant's door asleep. The other occupants were not sure if he was just asleep or unconscious so they called 911. The paramedics arrived and the tenant slowly responded to their questions. They took his vitals and helped him in his apartment. Another hole in the hallway wall was also reported in the area near his wheelchair.

The landlord submitted pictures in support of the alleged damage caused by the tenant's wheelchair in the hallway areas, doors and inside his apartment.

The tenant testified that the landlord is overusing the phrase that he was "passed out drunk". The tenant argues that just because he has his head down trying to sort out his keys does not mean he is passed out. The tenant argues that he may just have heard

someone calling out to him. The tenant testified that twice a month he does go out to have a "pint". He acknowledges that on occasion he may have had too much.

The tenant acknowledged the incident of May 26, 2018 but argued that it was just a bladder accident which has not happened before. He couldn't get his lock opened in time and he did have his pants pulled down. He testified that he was extremely embarrassed by this incident and he did apologize to his neighbor. His friend came and helped him clean up.

The tenant testified that the July 4, 2016 of him trying to pop open fire doors did not happen. The previous manager had installed ropes that he could pull on to open the doors but the current manager removed those citing a fire regulation which makes it more difficult for him to get through. The tenant testified there are no dents in the doors only some scraped paint.

The tenant testified that it was a surprise to him that the paramedics had been called in the incident of October 4, 2018. The tenant testified that he was just exhausted and must have fell asleep.

The tenant acknowledged he had an accident with his wheelchair causing a hole in the hallway wall. He testified that his sleeve got caught in the wheelchair controls causing it to go into the wall. He denies the second hole alleged by the landlord was caused by his wheelchair. The tenant testified that all damage caused by his wheelchair inside his suite has been totally repaired. He has patched up any holes which just now need to be painted. He had asked the landlord for paint but was not provided any. He testified that he would get the paint on his own.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

I find that the evidence submitted by the landlord that is comprised of the previous caution notices and witness statements support the issuance of the One Month Notice on the grounds of unreasonable disturbance of the landlord and other occupants. I find the three separate incidents of the tenant being found passed out by other occupants in the hallway areas of the apartment to be an unreasonable disturbance of the other

occupants and in turn the landlord who has to respond to complaints filed by the other occupants. On at least two of the occasions the tenant was found to have urinated in his chair and on the carpets which was witnessed by other occupants and on one occasion found with his private area exposed. I find that on a balance of probabilities, the tenant was likely passed out as a result of having too much to drink versus just being exhausted as argued by the tenant. The tenant acknowledged that he on occasion has had too much to drink and the fact that the tenant urinated and left himself exposed outside his apartment supports this finding. As this has been more than just a single isolated incident, I find this to be an unreasonable disturbance of other occupants as they go to and from their rental units.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 20, 2018

Residential Tenancy Branch