



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mission and District Senior Citizens Housing Association and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession, further to a One Month Notice to End Tenancy for Cause, and for recovery of the filing fee.

The tenant ("Tenant"), a Manager of the Landlord ("Landlord"), and an advocate for the Landlord ("Advocate") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I 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.

Neither party raised concerns during the hearing regarding the service of the Application and the Notice of Hearing.

Preliminary Matters

At the outset of the hearing, the Tenant acknowledged that while his documentary evidence was submitted to the Residential Tenancy Branch, it was not served on the Landlord, so I did not consider his documentary evidence in my decision.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the One Month Notice?

- Is the Landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The Parties entered into a tenancy agreement that started on February 1, 2018. The rent was \$425.00 per month due on the first day of each month. The Tenant paid a security deposit of \$237.00.

The Parties agreed that on December 18, 2018, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause (the “One Month Notice”), by serving it to the Tenant in person. The second page of the One Month Notice states that the Landlord’s reasons for this include:

- Tenant allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by 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.
 - Jeopardize a lawful right or interest of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord also stated on the second page of the One Month Notice:

TENANT HAS CHANGED LOCKS WITHOUT AUTHORIZATION, POLICE VISITS, UNAUTHORIZED OCCUPANTS, VISITORS CAUSING DISTURBANCES, SMOKING, USING COMMON AREAS AS STORAGE, UNTIDY PREMISE.

The Landlord submitted documents that had been delivered to the Tenant detailing behaviours that are consistent with the above noted explanation of the Landlord’s concerns. These include:

Date	Description
June 28/18	Handwritten note signed by “the Caretaker [S.]” describing the Tenant

	"breaking the lock off his door...[because] he lost his keys to his suite....he told me he changed the lock"
June 29/18	Typed letter from the executive assistant of the housing association addressing the Tenant having lost his keys and changed the lock. Included clause from tenancy agreement saying Tenant must not change locks. Warning that eviction notice may be issued.
Aug. 27/18	Typed note detailing the caretaker's observations of "a steady stream of traffic coming from and going to [Tenant's] suite. Also the shower in [Tenant's] suite was used at least 10 times !" [emphasis in original]
Aug. 28/18	Typed note detailing the Tenant taking two loads of laundry to the laundry room and closing and locking laundry room door. The Tenant was doing a woman's laundry. Noted that the Tenant "was doing laundry for other people that are known to be homeless."
Aug. 29/18	Typed note about another tenant, [R], advising that the RCMP were kicking and pounding on the Tenant's door, demanding it be opened. Another tenant, [A.] said she saw the police arrest a man who was in the Tenant's suite. "Both [A] and [R] were quite unnerved by this.
Sept. 12/18	Typed letter from the executive assistant of the housing association to the Tenant noting the attendance of the RCMP to the Tenant's suite on Aug. 25, physically removing the Tenant's visitor. Quoted a section of the tenancy agreement regarding how "inappropriate behaviour of a visitor will affect the tenancy agreement of the tenant." Also noted the locked laundry room door not being permitted. Warned of eviction notice, if these actions continued.
Oct. 8/18	Typed letter to Tenant from the executive assistant of the housing association, noting that one of the Tenant's visitors caused a disturbance and quoting section 47 of the <i>Residential Tenancy Act</i> about the Landlord's right to end a tenancy for this type of behaviour.
Oct. 24/18	Typed letter to the Tenant from the executive assistant of the housing association, regarding the Tenant having used the building hallways a storage, which was identified as dangerous and unacceptable, as well as a Fire Code violation. Warned of an eviction notice if items not removed immediately.
Nov. 28/18	Typed letter from the with a 24 hour notice advising the Tenant that "Housekeeping and Caretaker will be performing an inspection of your suite on Monday, December 3, 2018 at 10:00 a.m....You may be present for this inspection."
Dec. 3/18	Typed letter from the executive assistant of the housing association with follow-up to inspection visit that morning. Saying:"...your suite is in a state of unlivable clutter. It was also noted that you have been smoking and allowing others to smoke in your suite. This is not permitted and therefore is a breach of your lease agreement. ...This

	letter is to inform you that the eviction process will begin.”
Dec. 17/18	Typed letter from the saying “...you have changed the locks on your suite. This is not permitted under your signed lease agreement due to fire and emergency safety and housekeeping.” Quotes section of lease agreement in this regard. Advises that building maintenance or locksmith will be returning the lock to its original state. Warning that “failure to comply will result in further action.”
Dec. 18/18	One Month Notice served on Tenant.

The Tenant submitted a document with two handwritten letters from neighbours with character references, which included:

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In the time I have known [the Tenant] he is the kindest, most generous, most helpful and sweetest person. He thinks of others first and his heart is bigger than himself. Always offering help to others, with food, cleaning, shopping and many other things some of us are unable to do. He has brain injury and no matter how much physical pain he is in always offers a smile and pleasant word. I find him an asset here at the building. I do understand there has been issues, and after an extended conversation, he now has a better understanding of what has happened. He has now stopped all visitors as he has stated to me. I do believe he will abide by his decision on his visitors. I know there are worse people who do much worse than [the Tenant]. So I believe if he is given another chance you will find he won't be a disappointment. [The Tenant] has not only been a valuable friend but a wonderful help, with my physical disabilities. Not sure how I would manage some of my household cleaning without him. He's not perfect but he's an awesome man.

Thank you,
[B.D.]

Another letter stated:

In regards to [the Tenant's] termination of tenancy from [the rental unit building], I would like to submit my feelings on the matter if I may. In the year or so having [the Tenant] as a neighbour, it has been a true delight. First of all, I am a stroke survivor and most things (simple things) are hard for me to do. [The Tenant] has taken it upon himself to help in every way possible. For example, he takes out my garbage, he takes me shopping, he has even taken care of me when I was ill.

The list could go on and on. Never once in the time he has lived here has there been any loud music or noise coming from his suite, no parties or any trouble from [the Tenant]. He has become a true friend and excellent neighbour.

[F.J.]

In the hearing, the Landlord said there had been “numerous complaints regarding the Tenant having unsavory visitors in and out of the suite at all times. There have been a lot of tenants who have complained about being fearful. The Landlord went on to describe how the Tenant allows visitors to take showers and do laundry in the building facility. The Landlord said that they have observed cigarette butts in the Tenant’s suite, even though it is a no smoking building. “He has changed his locks, had too many visitors and there has been the smell of drugs from his suite.”

The Tenant said he has never heard of anyone being evicted for being untidy. He said that the fighting in the hallways has nothing to do with him. He said he “brought one of the instigators down to my place to end the confrontation.”

The Tenant said in the hearing that he changed the locks because he did not know it was illegal. He said “the previous caretaker was a questionable person. I’m not the only person that he would just walk in on without 24 hours notice or anything.” He said, “I stopped the previous caretaker from coming into my home on three separate occasions.”

The Landlord said, “all our tenants are seniors and very afraid of others and feeling vulnerable. They have spoken up and put their fears aside and I’m just there for those tenants. I want to make sure everybody feels safe in the home.”

The Tenant said, “Why not give some sort of warning beforehand per issues at hand, other than re changing the locks. I did that for my own protection.” The Landlord said that the Tenant was given notice. “In the evidence he has many letters re incidents that happened. Whether he picked up the mail, I am not sure.”

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the *Act*, I find that the Tenant was served with the One Month Notice on December 18, 2018, in person, with a vacancy date set out as January 31, 2019.

In the Parties' tenancy agreement, the following clauses are pertinent to the evidence and issues before me:

Clause 10(3) of the tenancy agreement states:

If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through arbitration under the RTA.

Clause 11 (3) states

- 3) The tenant must not change locks or other means of access to
...
b) his or her rental unit, unless the landlord consent to, or and arbitrator has ordered, the change.

Policy Guideline 8. Unconscionable and Material Terms

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;

- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Based on the evidence before me, the Tenant breached the terms of the tenancy agreement in a variety of ways. The Landlord's evidence that has not been contradicted is that the Tenant was informed of the breaches in writing and warned that continued behaviour in these ways could lead to an eviction notice. I find these warnings served to emphasize that the breaches constituted material terms of the tenancy agreement.

I find that the Tenant had ample opportunity to amend his behaviour, but that he continued to partake in behaviours that could result in his eviction. While some of the Tenant's neighbours expressed gratitude for his presence in their lives, there is other evidence before me that other occupants of the building were concerned about the type of visitor the Tenant welcomed into the building. Given the noted, complained of behaviours and the effect these had on other tenants of the Landlord's property, I find that the Tenant materially breached the terms of the tenancy agreement. I find that the One Month Notice issued on December 18, 2018, has been proven by the Landlord and is valid and enforceable.

More significantly, the Tenant did not dispute the One Month Notice by filing an application with the Residential Tenancy Branch within the 10 day statutory timeline provided under section 47(4) of the *Act*. As such, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice, pursuant to section 47(6) of the *Act*. Consequently, I find that the tenancy ended on the effective date on the One Month Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, since the effective date on the One Month Notice has already passed, I order that the order of possession be effective **two days** after service of it on the Tenant.

Since the Landlord has been successful with their application, I find the Landlord is entitled to recover the cost of filing their application from the Tenant. I grant the Landlord a monetary order, therefore, in the amount of **\$100.00** that the Landlord is authorized to deduct that amount from the Tenant's security deposit if full satisfaction of this award.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Order, the Landlord is authorized to retain \$100.00 from the Tenant's security deposit, should they wish to do so.

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: March 12, 2019.

Residential Tenancy Branch