



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC FF

Introduction

This hearing dealt with the tenants 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);
- authorization to recover the filing fee for this application pursuant to section 72.

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? Are the tenant entitled to recover the filing fee?

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 for this apartment unit began over 20 years ago.

The landlord served the tenants with a One Month Notice on September 19, 2019 with an effective date of October 31, 2019. 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, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

The landlord L.T. testified as follows:

- On September 14, 2019 at 5:00 a.m. the tenant was washing his vehicle in his underwear in the parkade of the building.
- They have security in the building and the security guards have come across the tenant H.J. many times.
- On this particular occasion the tenant assaulted the security guard by spraying him with water.
- L.T. testified that this was the final straw for the landlord as this is not the first incident involving a security guard and they have also issued other conduct letters to the tenant in the past.
- On June 22, 2019 there was a previous documented incident of the tenant being verbally abusive towards a security guard while working on his car. The tenant H.L. swore at the security guard after the security guard asked if he knew a suspicious looking individual going through the recycles.
- On October 5, 2017 the tenant was issued a conduct letter for aggressive behavior towards a security guard in an incident on October 1, 2017.

The owner of the security company F.R. testified as follows:

- He has had a few encounters with the tenant in the past and other guards have also filed incident reports involving the tenant.
- On September 14, 2019 at 5:15 a.m. while patrolling the property he encountered the tenant washing his vehicle in the parkade while playing loud music.
- The tenant was wearing only his underwear.
- As this was an unusual encounter, he proceeded to take a picture to file with the incident report.
- He had then gotten out of his car to patrol the stairwell near the area the tenant was working.

- The tenant started to come at him with the hose in his hand and started spraying him.
- The tenant got him quite wet.
- He didn't know what to do so he backed off and called the police.
- The tenant was trying to punch him while he backed off.
- On June 22, 2019 there was a previous incident involving another security guard from his company in similar circumstances. The tenant was verbally abusive towards the security guard.

In response, tenant R.Y. provided the following testimony and argument:

- The security guard started coming into parkade late at night while H.J. was working on his car.
- The security guard would be in plain clothes and an unmarked car.
- H.J. uses the wash bay early in the morning to not be disturbed himself and to not disturb others.
- H.J. has been doing this for 20 years.
- The landlord should have explained to the security guards that they may encounter the tenant.
- The security guard failed to introduce himself or produce a license.
- The Security Services Act requires a security guard carry and produce a license upon request.

The tenant H.Y. testified as follows:

- He asked the landlord if they had hired security to which they replied "yes" but they refused to tell him as of what date.
- He did not raise a hand on the security guard as alleged as he had a hose in one hand and a bucket in the other.
- He did initially spray the security guard's vehicle.
- It was the security guard who ran at him which is why he sprayed him.
- The security guard then assaulted him by pushing him to the ground.
- He was not in his underwear, but rather his swimming suit.
- He confirmed there have been previous issues with the security guard but argues this is because the security guard refuses to show I.D.
- He acknowledges yelling at a security guard previous due to frustration over breaking an expensive part on his car he was working on.

- He thought the security guard was just some “nut job” off the street.

In reply, the landlord submits they have had no other reported issues or complaints involving the security guard or company in question.

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 the tenant H.J.’s actions on September 14, 2019 constitute seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The landlord has a lawful right to hire a security company to patrol the rental property and the tenant’s actions towards the security guards impede the landlord’s right. The tenant acknowledged spraying the security guard’s vehicle with water and spraying the security guard. The security guard was only doing his job and the tenant’s actions were completely unprovoked. The tenant argues it was the security guard that allegedly assaulted him, but this was after he had sprayed the guard and his vehicle with water. Whether or not the security guard refused to provide I.D., the tenant’s actions were not justified. The tenant also acknowledged yelling at a security guard in an incident on June 22, 2019. Prior to this, the tenant had also been formally issued a conduct letter dated October 5, 2017 in regard to his aggressive behavior towards a security guard.

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. In the hearing, the landlord agreed to not enforce the order of possession until December 31, 2019 if they were successful.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. December 31, 2019**. 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 29, 2019

Residential Tenancy Branch