

Special Instructions

File No: 21063721

Fax the ☐ Applicant ☐ Respondent ☐ decision ☐ MN ☐ OP
Party:
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The following party will PICK UP the decision at

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☐ There are multiple ☐ Applicants ☐ Respondents

Send all ☐ Applicants ☐ Respondents copies of the ☐ decision ☐ MN ☐ OP
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Outcome Information

Decision Details: (Landlord, Tenant, Split, Dismissed, Dismissed with Leave, Cancelled/withdrawn, Jurisdiction Refused, Settled Other) Tenant

Decision Issue Date: April 1, 2020

Staff Code: FLE

Hearing Duration: 33 min

Method: (Med, Adj, Both, N/A): Adj

Act/Sections: (RTA/MHPTA) RTA 47

Writing Time (Min): 80

\$ Amount Requested: Click here to enter text.

\$ Fee Payment Ordered (Y/N): N

\$ Amount Awarded: Click here to enter text.

Section Dispute Codes: Click here to enter text.

Order of Possession (granted/denied): Denied

Order Effective (Days from service): Click here to enter text.

Order Date: Click here to enter text.



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 21063721

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

DARELL DELVIN KERR, Tenant,

Applicant

And

CML PROPERTIES MGT, Landlord,

Respondent

Regarding a rental unit at: 202 - 230 CLAPPERTON ROAD, KAMLOOPS, BC

Date of Hearing: March 31, 2020, by conference call.

Date of Decision: April 1, 2020

Attending:

For the Landlord: John Chaisson (resident care-taker)

For the Tenant: Darell Kerr
Ted Murray (counsel)



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC,

Introduction

On January 27, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated January 17, 2020. On February 10, 2020 the Tenant amended his application to include a One Month Notice to End Tenancy for Cause dated January 28, 2020.

The Landlord and Tenant appeared at the hearing. The Tenant was assisted by legal counsel. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The Landlord confirmed that he received the Tenant’s documentary evidence. The Landlord did not submit any evidence to the Residential Tenancy Branch.

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.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on May 1, 2018 and is on a month to month basis. Rent in the amount of \$800.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00.

The Landlord served a One Month Notice to End Tenancy for Cause to the Tenant in person on January 17, 2020. The Landlord testified that the Tenant refused to sign the Notice, so the Landlord issued another One Month Notice to End Tenancy for Cause dated January 28, 2020.

Both notices to end tenancy have an effective date (the date the Tenant must move out) of February 29, 2020.

Within both Notices, the Landlord selected the following reasons for ending the tenancy:

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*

The details of cause section of the Notice states that the RTB may cancel the notice if details are not described. The Landlord provided details surrounding an incident that occurred on January 16, 2020.

A One Month Notice to End Tenancy for Cause provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice.

The Tenant disputed both of the One Month Notices within the required time frame.

The Landlord provided testimony regarding an incident that occurred in the summer of 2018 where the Tenant allegedly got into an argument with another occupant of the rental property about cigarettes. The Landlord testified that the other occupant complained to him that the Tenant would not share illegally obtained reserve cigarettes. The Landlord testified that it was illegal activity; however, he took no action against the Tenant at that time.

The Landlord provided testimony regarding another incident that occurred in February 2019 where the Tenant got into a dispute with another occupant of the rental property

regarding cigarettes. The Landlord testified that the Tenant was assaulted by the other occupant, and the Landlord evicted the other occupant.

The Landlord provided testimony regarding another incident where a dispute arose regarding the Tenant's use of another occupant's bicycle. Apparently, the bicycle was damaged, and the Tenant refused to pay the other occupant for the repair. The Landlord stated that this resulted in an altercation at a food bank off the residential property. The Landlord testified that the Tenant came to him because he feared for his safety.

The Landlord provided testimony that the Tenant made allegations that he entered the Tenant's rental unit and stole a bus pass and locked him out of his computer. The Landlord testified that the allegation disturbed him. He testified that the Tenant could have come directly to him about his concerns but did not. The Landlord testified that there have been too many disturbances that have involved the Tenant. The Landlord issued the One Month Notices to End Tenancy for Cause.

In response to the Landlord's testimony, the Tenant's counsel submitted that most of the allegations made by the Landlord were not provided in the details of cause section within the One Month Notices. Counsel submitted that there was no notice of these allegations provided to the Tenant in advance of the hearing, which impacts a fair process. Nevertheless, the Tenant's counsel submitted that none of these allegations made by the Landlord rise to a level sufficient to support ending the tenancy.

With respect to the incident in January 2019, the Tenant's counsel submitted that the incident does not meet the legal standard of significant interference or an unreasonable disturbance to another occupant or the Landlord. Counsel submitted that the Tenant has not seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Tenant provided a solemn declaration dated March 16, 2020 where he states that on January 16, 2020, he believed his apartment had been broken into. He telephoned the RCMP due to the apparent trespass. He informed the RCMP that he lives alone, and when the RCMP asked him if anyone else had access, he replied that the Landlord might have access to the apartment. The Tenant states that he did not accuse the Landlord of entering; stealing; or tampering. The Tenant submitted that the RCMP elected to visit the Landlord and interview him.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reasons for ending the tenancy in the Notice are valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord failed to provide any detail in the Notices regarding the alleged incidents that occurred prior to January 2020. The Tenant did not have any notice prior to the hearing that the Landlord was relying on these incidents/ allegations in support of ending the tenancy. In addition, the Landlord did not provide any documentary evidence to the Tenant which would have made the Tenant aware of the allegations and would have given the Tenant an opportunity to prepare a response. I am mindful that the One Month Notice provides clear information to a Landlord that the RTB may cancel the Notice if details are not described.

I find that the allegations that occurred prior to January 2020 mostly relate to Tenant vs Tenant disputes over cigarettes and use of a bicycle. The Landlord did not issue the notices to end tenancy for illegal activity and I find that these incidents do not rise to a level sufficient to end the tenancy.

With respect to the incident of January 16, 2020, I accept that the Landlord was disturbed by this incident. I find that being interviewed by Police for possible illegal entry into the Tenant's rental unit and stealing/ tampering is cause for concern.

I find that there is nothing inappropriate with the Tenant reporting to Police his concern that his apartment was broken into. I find that the Tenant's response to Police that the Landlord has access into the rental unit is not misleading. Most Landlords have a key to access rental units in cases of emergency. I find that the decision to interview the Landlord was a decision made by the Police.

While I find that the Landlord was disturbed by what happened, I find that there is insufficient evidence from the Landlord to establish that the Tenant was not acting in good faith when he reported his concerns to Police.

I find that the Landlord has not provided sufficient evidence that the Tenant has significantly interfered with; unreasonably disturbed; or seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the One Month Notices to End Tenancy for Cause, dated January 17, 2020 and January 28, 2020.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

While I find that the Landlord was disturbed in relation to an incident that occurred on January 16, 2020, I find that there is insufficient evidence from the Landlord to establish that the Tenant was not acting in good faith when he reported his concerns to Police.

I find that the Landlord has not provided sufficient evidence that the Tenant has significantly interfered with; unreasonably disturbed; or seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Tenant's application is successful. The One Month Notices to End Tenancy issued by the Landlord dated January 17, 2020 and January 28, 2020, are cancelled.

The tenancy will continue until ended in accordance with the Act.

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: April 1, 2020



F. Lee, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

