



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

On September 28, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing. C.L. attended the hearing as an agent for the owner/Landlord. As such, the owner’s name was added as a Respondent to the Style of Cause on the first page of this Decision. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing package in person on October 2, 2020. As well, she served her evidence in person on November 20, 2020. C.L. confirmed that he received the Notice of Hearing and evidence package and he took no issue with the service of the Tenant’s evidence. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing package and the Tenant’s evidence. As such, this evidence will be accepted and considered when rendering this Decision.

C.L. advised that the Landlord’s evidence was served to the Tenant in person on November 24, 2020 and he stated that the Tenant advised him that she could view this digital video evidence on November 25, 2020. The Tenant confirmed that this evidence was received; however, she stated that she did not have a USB port and could not view the video evidence. She did review all the other evidence though. As service of this evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Landlord’s evidence has been satisfactorily served on the Tenant. However, I am not satisfied that the Tenant could view the digital video

evidence. As such, only the Landlord's documentary evidence will be accepted and considered when rendering this Decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's One Month Notice to End Tenancy for Cause, that her other claim would be dismissed, and that she is at liberty to apply for this claim under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2019, that the rent is currently established at \$950.00 per month, and that it is due on the first day of each month. A security deposit of \$475.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

C.L. advised that the Notice was served to the Tenant by hand on September 27, 2020. The reason the Landlord served the Notice is because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.” The effective end date of the tenancy was noted as October 31, 2020 on the Notice.

He advised that on September 7, 2020, the Tenant contacted the Landlord to complain of people engaging in sex in a truck in the alley. He took a witness with him, but there was no evidence of what the Tenant reported. He reviewed the security camera footage and observed this truck, but he could not confirm the Tenant’s allegations. He stated that he observed the truck depart but another car pulled up, and other residents of the building put some tires under another car and left.

He submitted that the Tenant sent one of these residents a text stating that she would “slit her throat”. He stated that he sent a warning letter to the Tenant about her unacceptable behaviour and the Tenant sent a text, to this other resident, apologizing for her threats. He referenced the screenshots of the text messages that were submitted as documentary evidence to support his position. He made many other submissions with respect to more alleged behaviours of the Tenant that were inappropriate and unacceptable after being warned multiple times in writing. However, despite these written warnings, the Tenant continued to act in a manner that was detrimental to her tenancy. These other incidents have not been outlined in this Decision.

The Tenant advised that she did not send the message threatening to slit another resident’s throat. She provided inconsistent testimony about her phone being damaged at the time and that she had another phone to use. She then advised that she lent her phone out to another party and suggested that this person may have composed and sent the message. She confirmed that her phone number was the same number that was displayed in the text message documentary evidence where the threat was issued and where the apology for the threat appeared. Despite these messages coming from her number, she stated that she did not compose them, and she could not explain how they appeared in that evidence. She advised that she would contact her cell phone provider to find out how these could have been sent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, while the Tenant's name was misspelled on the Notice, as the Tenant indicated that she knew this Notice was for her, I am satisfied that this was simply a typographical error. As such, I find that the Notice meets all of the requirements of Section 52 and that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

When considering the multiple submissions regarding why the Notice was served, the only one I have focussed on is the alleged threat of slitting another resident's throat. I have before me a screen shot of a text message interaction between a resident and a phone number that the Tenant has confirmed is her number. In this interaction, there are several highly offensive messages, seemingly originating from the Tenant's phone number, where it states that "ill[sic] slit her throat" and "I lied too... I'm not innocent". There is another screen shot of a text message interaction between a resident and a phone number that the Tenant has confirmed is her number. In this interaction, there is a message, seemingly originating from the Tenant's phone number, where it states that "I think I made a huge mistake I threatened you cause[sic] I thought you did something disgusting and disrespectful to my home. But I shouldn't of[sic] threatened you... I think I was wrong in doing that, I'd like to apologize".

While the Tenant denied ever composing these messages, she provided inconsistent and contradictory testimony about her phone. Furthermore, the nature of these allegations is serious, and while the Tenant claimed that she never authored these messages, she stated that she would contact her cell phone provider to investigate how these could have been composed if she did not do it herself. However, given how

serious these threats are, it does not make sense to me why she would not have launched an investigation into this sooner. I do not find her claims to be busy working to be a plausible explanation for not taking action into this alleged fraud earlier. Moreover, she claims to have lent her phone out to another party and she speculated that this other party may have authored these texts from her phone. However, this did not accord with her inconsistent submissions about her phone being allegedly damaged, nor was it consistent with the timeframes that it was allegedly damaged.

I find that the Tenant's questionable testimony causes me to doubt the credibility of her submissions on the whole. As such, I prefer the Landlord's evidence. Consequently, I am satisfied on a balance of probabilities that the text messages were sent from the Tenant's phone, by the Tenant.

Ultimately, I find that there is sufficient evidence to justify service of the Notice under the reason that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property. As such, I dismiss the Tenant's Application and pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession.

Conclusion

The Tenant's Application is dismissed without leave to reapply. The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any occupant on the premises 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: December 7, 2020

Residential Tenancy Branch