



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on March 22, 2021. They seek an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the landlord on March 10, 2021. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 6, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions in the hearing. At the outset of the hearing, both parties confirmed they received the prepared evidence of the other in advance of the hearing. On this basis, the hearing proceeded as scheduled.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the One Month Notice?

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

The landlord provided a copy of the extant tenancy agreement, in place since 2013. Both parties confirmed the terms therein, with the current rent amount being \$826. The tenant outlined that their original agreement in the property was in 2007, and they had

changed units twice whilst living in the building. They emphasized this is 13.5 years they have lived in this property.

Both parties provided a copy of the One-Month Notice. The landlord issued this document on March 10, 2021 and served it to the tenant by affixing it to the door of the rental unit on that same date. The tenant confirmed receipt in this manner on the same day.

On page 2 of the document, the landlord provided the reasons they issued this document:

- 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 landlord provided a two-page document with the One-Month Notice. This describes the incident of March 1, 2021 where the landlord knocked on the door of the tenant's rental unit to inquire about a smoke odour. This document sets out the landlord's account of the tenant's actions in detail. The tenant opened the door "very angry" then "exploded verbally" using obscene language that was audible throughout the hallway. The tenant then "jumped in [the landlord's] direction swung [their] fist towards [the landlord's face several times and yelled. . ." This caused the landlord to panic.

In the letter the landlord also drew attention to the "BC Crime Prevention Addendum" that they provided in their evidence, shown as signed by the tenant in 2008.

For their evidence, the landlord provided written accounts of two witnesses. One was immediately across the hall from the doorway, and upon hearing raised voices they looked out from their unit to see the tenant "raising [their] fist towards [the landlord]." The left the landlord "calling for help". The second account from a separate unit's resident has their account of hearing "the tenant . . . yelling" and this "did continue for several minutes".

In the hearing, the landlord stated they could not recall the exact words of the threatening language from the tenant; however, they were certain the tenant's movements were not "gesticulations" and instead were motions indicating a physical threat. The landlord confirmed they did not contact the police for this incident. After

this, they consulted with the property manager who advised the landlord to follow with an end to the tenancy.

When the tenant applied to dispute this One-Month Notice, they added a short statement that provides the landlord had “over-exaggerated the argument.” They provided they “did not threaten him or step towards him”. Moreover, their physical condition prevents this. They also drew upon the long-term tenancy in place for 13.5 years, when they “never missed rent once or never had any written statements or complaints.”

In the hearing the tenant described how at the time of the incident they were taking an assortment of medications for back pain, and had previously taken a sleeping pill. This meant they “woke up from a dead sleep.” They admitted they were totally upset and swearing, and apologized to the landlord for upsetting them. They did not observe other residents in the hallway at that time and asserted they did not chase the landlord down the hallway or swing their fists.

Analysis

The *Act* s. 47 states, in part:

- (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,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

In this matter, the onus is on the landlord to prove they have cause to end the tenancy. I find the evidence provided by the landlord does not prove the reasons for issuing the One-Month Notice are in place.

Both parties agree there was a confrontation on March 1; however, what differs is their interpretation of the degree of this conflict. Most importantly, I find the tenant

apologized for making the landlord upset, and pledged that this behaviour would not happen again.

I have taken into account the tenant's state of mind at the time of the incident. They admitted to waking from a dead sleep at that time, and being on other medication. This is due to significant health challenges. I find it is not outside the bounds of reality to attribute the tenant's words and gestures to the medication and state of mind in that moment. This was not due to a provocation from the landlord; indeed, the tenant readily admitted their conduct was unacceptable at that moment. In sum, I find this does not excuse the actions of the tenant; however, in my mind it explains them.

The tenant spoke of the decent relationship the parties had established over the years. The landlord did not present that they live in fear of further incivility from the tenant. There is no evidence there were any other outbursts from the tenant in response to questioning from the landlord. I am satisfied this is an isolated incident and should not outweigh the established landlord-tenant relationship that has been in place for quite some time.

In line with this, I give weight to the tenant's evidence that they have paid the rent without fail and have not been the source of any other difficulty for the entirety of the thirteen-plus years of tenancy. I find it more likely than not that there will not be a further incident of this kind in the future.

In sum, I find the incident, though jarring, does not warrant an end to this long-term tenancy. I find the landlord has not presented that the tenant *significantly* interfered with them or others. This was a one-time testy response from the tenant. Clearly it is out-of-scope with respect to the issue raised by the landlord at that moment; however, an end to this tenancy is out-of-scope with respect to the length of this tenancy which I find has been incident-free for quite a long time.

Finally, I am not satisfied the threat of physical violence was palpable to the landlord. They did not follow up with the police which is the normal course of action for physical threats. I find the incident as described is not akin to something that "seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant."

For these reasons, I order the One-Month Notice to be cancelled.

Conclusion

For the reasons above, I order the One Month Notice issued on March 10, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 6, 2021

Residential Tenancy Branch