



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER ISLAND MENTAL HEALTH
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 23, 2022 ("One Month Notice"); and for an order directing the landlord to comply with the Act, regulation, or tenancy agreement.

The Tenant and two agents for the Landlord, J.S. and G.B. ("Agents"), 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 it. One witness for the Tenant, S.E., was also present, but she was not called upon to give affirmed testimony.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, the Agents provided the Landlord's name in this matter, as the Landlord identified on the Application was an Agent's name, which is inappropriate, as the Respondent should be the Landlord, not an agent of the Landlord. The Agents advised me of the owner's name, so I have amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 1, 2021, with a monthly rent of \$850.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$425.00, and no pet damage deposit. The Agents confirmed that the Landlord still holds the security deposit in full.

Both Parties submitted a copy of the One Month Notice, and in the hearing, they agreed that it contains the following: The One Month Notice was signed and dated February 23, 2022, it has the rental unit address, it was served by posting it on the door of the rental unit on February 23, 2022, with an effective vacancy date of March 31, 2022, and it was served on the grounds that the Tenant or a person permitted on the property by the Tenant put the Landlord's property at significant risk; the 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; and jeopardize a lawful right or interest of another occupant or the landlord.

In the hearing, I explained that the Landlord has the burden of proving the validity of the One Month Notice on a balance of probabilities. As such, I started by asking the Agent why the Landlord served the One Month Notice on the Tenant. The Agent said:

From almost the first day he moved into the complex there were reports of his

having a number of guests late at night by other tenants in the building. We took time to check the numbers, and it was an excessive number - sometimes 10 or 11 guests per night for basically a year.

At one point, I sent him various notices about the number of guests coming to the door; we did random checks for the evening. It was on a daily basis. In order to save paper, the number of guests the entry system was eight pages long one weekend.

At some point [the Tenant] had his name taken off the front door register, so I was unable to track it at that point. But with a number of people tramping through the building - the type of people was of great concern, given the hours in the building. Women tenants expressed they were feeling unsafe with the people in the building.

We weren't able to track it, so we relied on evidence from tenants who would see individuals who were visiting in areas of the building they shouldn't be – mechanical parts of the building, for example. One guest of [the Tenant's] set off a fire alarm, another stole a chair of the building. We advised him to take care of his guests. We continued dealing with ongoing complaints from other tenants including confrontations outside of the building. They are afraid of repercussions from [the Tenant] if they come forward in writing.

The final stage after being patient with his guests was an intervention by the RCMP looking into the activities in his unit – see our evidence. We felt certainly an indication that something illegal going on in [the Tenant's] unit.

The Landlord submitted a statement dated June 6, 2022, in which the Agent, G.B., said:

...

At approximately 1100, two RCMP officers arrived seeking video surveillance specifically related to guests of [the Tenant] in [his] unit. They requested to review our surveillance footage as they had concerns about a potential guest. The RCMP officers stated there had been witnessed drug dealing and [redacted phrase] linked to [the rental unit].

The Agent indicated that the RCMP were provided with the requested video footage.

In the hearing, the Tenant responded to the Agents' testimony, as follows:

From the beginning, the first five months I didn't have any guests at all. Then I started working with an outreach program and they give out supplies and bus tickets to homeless people and they come at all hours. I have approached [the Agent] and let him know this, and he told me I wasn't allowed to do this. I've talked to the other tenants, and all have said everything was fine. I've been blamed for other guests. I've never had the cops come to my place.

I don't know why they are coming after me. Harassing me with the footage in the hallways. It's more of a harassment thing than anything. My friends are not comfortable here, either. I didn't know the cameras keep an eye on tenants; I thought it was for our protection.

I suggested taking the buzzer off, because they wanted less people to come by here. So, I asked him to take my name off the buzzer; but these people have no cell phones. Some of them are homeless. I can't help it if other people let people in the building.

There are numerous tenants that let people in the building, because it happens all the time. There are no signs stating not to go down the basement. If you look in [the Landlord's] Exhibit #1, there's no signs stating no access to the basement. There's no signs that there's surveillance in the building.

There was a stolen truck found on the road, which had nothing to do with me. They figure it could have been someone from my unit. That was never a proven fact. Not all the people who come into my building are for my unit, but it gets pinned on me.

I asked the Tenant if he had submitted any evidence from the outreach program to corroborate his version of events. He said he could give me a telephone number and they can verify it. I explained that all evidence had to be submitted prior to the hearing to be considered in this proceeding.

The Agents responded, as follows:

We don't monitor any tenants and [G.B.] can confirm that. We have a very slow computer system. It took several hours of me trying to get information off the computer. The cameras are there for security for all tenants in the building. We do not monitor our tenants unless there's an incident – to track that incident. A report of someone coming up from the basement, and that they were visiting [the

Tenant] – also the exit to our smoking area. We don't know that there could be many, many more people I have to try to find where that person comes from and that's what we've relied on with the evidence submitted.

Also, after 25 years of working in social services, never have I seen any agency that would give a private individual bus tickets and grocery cards to hand out in their home. We have detox centres, sheltering centers, ... it's not done by an individual. No legal way to validate who was being given what – it's not a reasonable practice. We did not consider this to be the reason why he had so many visitors.

The Tenant replied:

It's an outreach program in the community. Friends are outreach workers; I told them I would help them out. I have been homeless before in the past. Most are more respectful than people in houses. I try to keep them.

I said I would cover the \$500.00 fine for the fire alarm. As for the chair, I got the chair back, and the stolen item by another resident guest back for the person

I make sure that my guests are respectful. Most of the tenants are the friends with the people who come by every day. They treat them very badly when they come around and have not nice things to say about them.

I offered the Parties the opportunity to make any last statements before I ended the hearing. This is what they said:

The Agents said:

I have to dispute some of the things [the Tenant] was pointing out; many people have been homeless at one time or another. It's not true that his neighbours think he is fine. Many people on his floor came from therapeutic communities. Two stay out of the building, because they feel their own sobriety is being threatened with all the drugs in the building. They are supportive of our efforts to end his tenancy.

Again, the evidence -yes, he offered to pay for the fire alarm fine, but it's not an issue of cost - it jeopardizes all of the people in the building. It could have been damaged – it didn't set off the sprinkler system - so there was no damage, but it

was an inconvenience to tenants. And night time traffic to his suite causes concern to all of the people on the floor.

Even evidence of [the Tenant] going down to the mechanical room with a guest for an hour – why is that necessary, if he's giving bus tickets. We have provided photo evidence in our package of him going down there. We don't know how many people he's gone down there with, because we don't monitor the system. We have to track it when we get a report.

The Tenant said:

He's referring to going to the basement. A friend and I sat on the stairs to talk with her for a little while. A lot of the times that people went down there to check that there was nobody down there. If you check the cameras, they went down for five seconds to check and came back. And it's an empty space down there.

The fire alarm - the person left my apartment. I left six hours after he left. How is that possible? All of the other witness statements - I talk to every single person on my floor and where is he getting – I'm friends with all of them. They're really good friends with all of them.

The statements used to describe me in the file, they describe somebody else – they call him the 'big guy'. I don't have red hair or red and white shoes or a backpack. It's not even me that they're describing. One statement is complete slander and defamation of character, saying I was pleasuring myself while watching someone in distress in the gazebo. None of these things describe me at all, they describe someone different. I am taller than 6 feet and they are describing someone smaller, and I have a brown beard, not a red beard. The camera footage is completely – it's dark – there's no resolution. The pictures are totally illegible. They just describe what they're doing, but there's nothing wrong with anything.

I'm honestly baffled by this entire thing. I haven't done anything to deserve the harassment I've gotten. I wish they'd have talked to me in the first place, instead of jumping to conclusions. If they threaten to evict, if we don't walk them in and out of the building. I'm completely baffled.

I'm baffled by the entire thing. I think I've done nothing wrong. They are friends of mine, and the coworkers of my friends are here. It's right out of left field.

I can understand that if someone was selling drugs, it would look like what's going on in my situation, yes, but that's not what's going on.

My friend's ex boyfriend – [R.W.] – is doing it out of spite. They're talking to him and telling him things, he is doing it out of spite, he doesn't like that I'm hanging around his ex-girlfriend. He's doing it out of spite.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for 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,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord's Agent alleged that since early in the Tenant's tenancy, he has regularly had multiple guests – often homeless people – attend the residential property late at night or early in the morning for brief periods of time. The Agent asserts that the Tenant is selling drugs to these people, although, the Tenant has asserted that he is providing bus tickets and supplies to the less fortunate. The Tenant said that he approached the Agent about this, saying that he let the Agent know he was doing this; however, he acknowledged the Tenant also said that the Agent, "...told me I wasn't allowed to do this."

I note the Agent's evidence of having 25 years experience working in social services. His experience is contrary to the practice the Tenant says he is conducting. The Tenant did not explain why people have to come to him in the middle of the night for bus tickets and supplies. As the Agent said: an agency would not give a private individual bus tickets and grocery cards to hand out in their home. The Agent said: "

We have detox centres, sheltering centers, ... it's not done by an individual. There's no legal way to validate who was being given what – it's not a reasonable practice. We did not consider this to be the reason why he had so many visitors.

The Agent said that other tenants - particularly female tenants - have expressed that they feel unsafe with the people the Tenant is letting into the building. Further, the Tenant did not deny that with or without him, some of the people he lets into the building go in parts of the building in which they have no business being. The Tenant also acknowledged that one of his guests stole a chair and that another set off the fire alarm.

The Agent said that they tracked the number of visitors the Tenant had on a daily basis and that it ranged from 8 – 12 a night. Further, the Agent said that they printed out the

number of guests the Tenant had on one weekend and that this list was eight pages long. At one point, the Tenant had his name removed from the door register, after which, the Agents could no longer track the Tenant's guest visits.

Further, the Agent said that there has been an intervention by the RCMP looking into the activities in this rental unit. The Agent provided evidence supporting his statement that the police have requested video footage of the people visiting the Tenant's rental unit. The Agents said that the RCMP officers stated there had been witnessed drug dealing linked to the rental unit.

When I consider the evidence before me overall, I find that the Tenant's version of events does not ring as true as does that of the Landlord. I find it inconsistent with common sense and ordinary human experience that people would be frequently visiting the Tenant at night to obtain bus tickets and food cards or other supplies. Further, the Tenant did not submit any evidence from an outreach program indicating that he was doing this. While the Tenant does not have the burden of proof in this matter, it still raises questions in my mind that the Tenant did not provide any evidence to defend himself, other than copies of the eviction notice.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

Accordingly, and pursuant to section 55 of the Act, I grant the Landlord an Order of Possession for the rental unit. Given that the effective vacancy date has passed, the **Order of Possession will be effective two days** after the Tenant receives the Order. The Tenant's claim is dismissed wholly without leave to reapply, pursuant to sections 47 and 62 of the Act.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to support their burden of proof on a balance of probabilities. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of March 31, 2022.

I grant the Landlord an Order of Possession effective two days after being served on the Tenant.

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.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 20, 2022

Residential Tenancy Branch