



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code **OPC**

Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated April 19, 2021 ("1 Month Notice") pursuant to section 47 of the Act.

The Landlord's agent ("EL") appeared at the participatory hearing. The Tenant did not attend the hearing even though I left the teleconference hearing connection for the entire duration of the hearing scheduled for 11:00 am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Proceeding Hearing ("NDRP") generated when the Landlord applied. I also confirmed throughout the duration of the hearing that the Tenant was not in attendance and that EL and I were the only ones on the conference call. EL was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. During the hearing, two witnesses ("PJ" and "CG") were called to provide testimony on behalf of the Landlord.

EL stated the NDRP and the Landlord's evidence (collectively the "NDRP Package") was served on the Tenant by registered mail on May 12, 2022. EL submitted the Canada Post stub showing the tracking number for service of the NDRP Package on the Tenant. I find that the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act. Pursuant to section 90, I find the NDRP Package was deemed to have been received by the Tenant on May 17, 2022.

Issue to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

EL submitted into evidence a copy of the tenancy agreement dated April 22, 2021, together with two addenda, between the Landlord and Tenant. EL stated the tenancy commenced on April 22, 2021, on a month-to-month basis, with rent of \$375.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$187.50 by May 1, 2021. EL stated the Tenant paid the deposit and that the Landlord is holding the deposit in trust for the Tenant.

EL stated the 1 Month Notice was served on the Tenant's door on April 19, 2022. The 1 Month Notice stated the cause for ending the tenancy was the Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The details of the cause provided in the 1 Month Notice were:

On April 9th, 2022, [the Tenant] was in the lobby at 10:30 pm bringing in a large construction fence. When asked not to bring it up as it was a safety concern, [the Tenant] call staff [obscene words], threatened to throw the fence at staff and threatened to kill staff. This was the third incident of violence against the landlord in a month. On March 23rd, 2021, at approximately 2:10 am, [the Tenant] was in the lobby at the front desk and threatened to "smash [staffs] teeth". During this incident on March 23rd, [the Tenant] also threatened a staff member's life. On April 1st, at 11:47 am, [the Tenant] came down to the front desk and yelled at staff they were [obscene words] and told staff to watch their backs. Staff also reported that [the Tenant] said he was going to give someone "the green light" to harm them. As a result of these incidents, staff feel as if their health and safety is significantly at risk.

EK submitted into evidence an Incident Report dated December 28, 2021 prepared by the Landlord's staff and a letter to the Tenant dated December 29, 2021 that provided the details of an incident that occurred on December 28, 2021. EK stated the Tenant came to the lobby and told the Landlord's staff that, belongings he had left in the hallway outside the door to his rental unit, were missing. EK stated the Tenant wanted to see the surveillance video of the hallway. EK stated the Landlord's staff told the Tenant that, due to privacy issues, they could not provide the surveillance video and that he would need to call police and make a report to them. EK stated the Tenant became verbally abusive to staff, threatened to burn the building down and that he was going to get his family involved. The Incident Report provided details of obscene language, which cannot be reproduced in this decision, used by the Tenant at the Landlord's staff. The letter of December 28, 2021 stated that the Tenant's threat of burning the building down, and getting third parties involved in the conflict that might lead to violence, was a breach of a material term of the tenancy agreement.

EK submitted into evidence a copy of a warning letter dated January 19, 2022 to the Tenant that stated the Tenant may have booby trapped the door in his room so that large heavy objects would fall on anyone entering the Tenant's room. The warning letter of January 19, 2022 stated one resident had recently entered the Tenant's room and a hard object fell on the resident's head causing injury. The warning letter dated January 19, 2022 requested the Tenant not to booby trap his doorway and that it was putting the health and safety of the Landlord's agents in jeopardy.

EK submitted into evidence a copy of an Incident Report dated March 23, 2022 and a warning letter to the Tenant dated March 23, 2022 that provided the details of an incident that occurred on March 23, 2022. EK stated the Tenant came to the front desk, accused the Landlord's staff of stealing his ministry cheques and stealing his money. EK stated the Tenant shouted at one staff member that, if he did not return the Tenant's money, he was going to smash the teeth of that staff member. The Incident Report provided details of obscene language, which cannot be reproduced in this decision, used by the Tenant at the Landlord's staff. EK stated police were called because the Tenant was threatening the safety of the Landlord's staff. The warning letter of March 23, 2022 stated that, by threatening staff, they become fearful for their safety. The warning letter requested that the Tenant not to throw anything at staff or touch them in any way to inflict harm. EK called PJ as a witness. PJ corroborated the details provided in the Incident Report dated March 23, 2022. PJ testified the Tenant came and starting shouting at the staff and accused them of stealing his money. PJ stated that Tenant then focused on him and stated that, if PJ did not return his money, he would smash his teeth out.

EK submitted into evidence a copy of an Incident Report dated April 1, 2022. EK stated the Incident Report provided details of an incident that occurred on April 1, 2022 in which the Tenant came to the front desk and reported that someone had stolen his property that he had left in the hallway outside of the door to his rental unit. The Incident Report provided details of obscene language, which cannot be reproduced in this decision, used by the Tenant at the Landlord's staff. EK stated the Tenant told staff that he was "going to give the green light" that staff interpreted as meaning the Tenant would arrange for them to be harmed. The warning letter dated April 8, 2022 outlined the Tenant's verbally abusive behaviour on April 1, 2022 and veiled threats about other people harming the Landlord's staff. The letter of April 8, 2022 warned the Tenant that, if the Tenant continued to threaten staff, or engage in any act of violence in the building, the Landlord would have no choice but to end the tenancy.

EK submitted into evidence an Incident Report dated April 9, 2022, the Tenant arrived came into the lobby of the building with a segment of portable fencing. EK stated staff told the Tenant he could not bring the fencing into the building as it would not fit, could damage the building and would not comply with the fire code. EK stated the Tenant became verbally abusive and told one of the staff member that she was lucky she was behind a glass barrier because he would throw the fence at her. The Incident Report provided details of obscene language, which cannot be reproduced in this decision, used by the Tenant at the Landlord's staff. EK stated the Tenant also threatened to kill the staff member. The warning letter of April 12, 2022 warns that violence, threats, verbal insults and any other act of violence would affect the tenancy.

EK submitted into evidence an Incident Report dated April 15, 2022 and a warning letter to the Tenant dated April 21, 2022. EK stated that staff notice materials piling up around the front of the door to the Tenant's rental unit and detected a fecal odour. EK stated that staff members later observed that the Tenant had pushed feces outside his door. EK stated fecal material is a biohazard for staff and other residents of the building. EK stated that staff requested the Tenant to clean up the garbage and feces three times but the Tenant would not comply with their request. EK stated that a staff member eventually removed the feces.

EK called CG as a witness. CG testified that, on April 15, 2022 at about 9:30 pm, he was doing hourly rounds in the building and he noticed there was a fecal odour near the Tenant's door and there were items accumulating outside the Tenant's door. CG stated staff later found feces outside of the Tenant's door. CG stated staff made three requests for the Tenant to clean up the feces and other items. CG stated that, when the Tenant

did not comply with the requested of staff, he eventually cleaned up the garbage and used a shovel to remove the feces.

EL stated that on July 13, 2022, the Tenant threatened to kill two staff members. EL stated the police were called and the Tenant was arrested on July 14, 2022. EL stated she has been advised by the police that a judge has issued no go order that prohibits the Tenant from going onto the residential property and a no contact order that prohibits the Tenant from having contact with the Landlord's staff.

Analysis

Subsection (1)(d)(ii) and sections 47(2), 47(3), 47(4) and 47(5) of the Act state:

- 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
 - [...]
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - [...]
- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

The 1 Month Notice was served on the Tenant by registered mail on April 19, 2022. I find, pursuant to section 90 of the Act, that the Tenant was deemed to have received the 1 Month Notice on April 24, 2022. Pursuant to section 47(4) of the Act, the Tenant had until May 4, 2022 to make an application to dispute the 1 Month Notice. There is no evidence that the Tenant made an application to dispute the 1 Month Notice. As a result, section 47(5) provides the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice, being May 31, 2022.

Although not a cause listed in the 1 Month Notice for ending the tenancy, EL stated the Landlord has been told by police that, as a result of the incident on July 14, 2022, the court has issued the Tenant with a no go order prohibiting the Tenant from entering the residential property and a no contact order issued against him prohibiting him from having contact with the Landlord's staff. I find these orders did not prevent the Tenant from attending this hearing or, alternatively, appointing an agent or advocate to appear at this hearing on his behalf.

Sections 55(2) through 55(4) of the Act state:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
- (a) a notice to end the tenancy has been given by the tenant;
 - (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.

- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
 - (a) *grant an order of possession, and*
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

[emphasis in italics added]

Based on the foregoing, I find the Landlord is entitled to an Order of Possession pursuant to section 55(4)(a) of the Act.

Notwithstanding the Tenant is conclusively presumed to have accepted the tenancy has ended, I will nevertheless consider whether there was cause to end the tenancy pursuant to the 1 Month Notice.

EL provided undisputed testimony the Tenant has verbally abused the Landlord's staff using obscene language on numerous occasions that I cannot reproduce in this decision. EL provided undisputed testimony and evidence detailing four incidents in which the Tenant threatened to cause, or arrange for, physical harm and injury to the Landlord's staff and threatened to burn the down the Landlord's residential property.

Based on the undisputed testimony of EL PJ and CG, together with the Landlord's evidence, the Tenant has seriously jeopardized the health, safety and lawful right and interest of the Landlord and the Landlord's staff. As such, I find the Landlord has proven, on a balance of probabilities, that there is cause to end the tenancy early pursuant to subsection 47(1)(d)(ii) of the Act.

I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 52 of the Act. Based on the foregoing, pursuant to section 55(4)(a) of the Act, I grant the Landlord an Order of Possession of the rental unit to the Landlord requiring the Tenant to deliver vacant possession of the rental unit within two days of being served with a copy of this decision and attached Order by the Landlord.

Conclusion

I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order by the Landlord. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: August 16, 2022

Residential Tenancy Branch