



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Qualicum Bay Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On November 13, 2022, the Tenant filed their Application at the Residential Tenancy Branch to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) served by their Landlord on November 1, 2022;

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 27, 2023. Both parties attended the teleconference hearing.

Preliminary Matter –disclosure of Tenant’s evidence

At the outset of the hearing, the Tenant described providing evidence to the Residential Tenancy Branch 3 days in advance of the scheduled hearing, on March 24, 2023. They did not disclose this to the Landlord, stating they had no means to do so.

The *Residential Tenancy Branch Rules of Procedure* as well as basic principles of administrative fairness are that evidence intended to be relied upon by a party in an administrative tribunal setting must be disclosed to the other party. This information was not disclosed to the Landlord; therefore, I give this information, provided by the Tenant to the Residential Tenancy Branch on March 25, no consideration herein.

Aside from this, the Tenant submitted their evidence on March 13, 2023. This is within the 14-day timeline set in the *Residential Tenancy Branch Rules of Procedure* – Rule 3.14 – therefore I give this material full consideration herein, if and when relevant to the issues.

The Landlord did not provide their evidence specifically concerning the Tenant's neighbour – in particular that neighbour's medical condition – to the Tenant as required. For that reason, I give no consideration to that information that the Landlord chose only to provide to the Residential Tenancy Branch. There is no "confidential" source of information directly to the decision-maker in this administrative tribunal setting.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement that set out the basic terms. The tenancy started on April 15, 2019 as shown in that agreement. This is a subsidized rental agreement, on a month-to-month basis, with the Tenant paying an amount based on income.

The Landlord issued the One-Month Notice on November 1, 2022. This set the end-of-tenancy date on December 1, 2022. The Landlord provided a copy of the One-Month Notice in their evidence. The reasons provided on page 2 of that document are:

- 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 the following details on page 2 of the document:

On September 28th 2022, the Tenant [name] . . . did assault and enter the home of another tenant living in Unit 2B.

[The Tenant] submitted [their] written and signed "Notice to Vacate" . . . on October 31st 2022.

[The Landlord] accepted [the Tenant's] Notice to Vacate the unit which fell due on October 31st 2022. [The Tenant] received confirmation in writing from [the Landlord] to inform [the Tenant] that [the Tenant's] Notice to Vacate on 31st October 2022, is accepted and regarded as binding.

[The Tenant] was notified 7 days in advance that [the Landlord] would visit [the Tenant's] residence on October 31st 2022 to inspect the property. [The Tenant] has refused to allow any access to the property by [the Landlord] despite having the required notice.

On October 31, 2022 [the Tenant] left a letter in the Office 'drop box' which stated that [they] "will not be leaving" and for [the Landlord] "not to come".

[The Tenant] had over a month to contact [the Landlord] in writing to seek further time to vacate, and did not do so until [the] scheduled day of departure.

The victim informed [the Landlord] that since [their] return home [the Tenant] continues to "glare and make gestures . . .". A number of [rental unit property] residents have expressed their fear and unhappiness and hope that this is resolved as soon as possible.

In the hearing, the Landlord described how the Tenant placed the safety of their neighbour in jeopardy, in an assault where the police attended. This incident left the neighbour hospitalized on September 26, 2022.

An excerpt from the related incident report authorized by the police provides that the neighbour "was upset and talking about suicide after an altercation". The altercation with the Tenant had "triggered" that neighbour, who became depressed and was transported to the hospital.

The Landlord's own incident report in the matter reports the incident of September 26, 2022, with the neighbour reporting that the Tenant "sprayed [the neighbour] with water from outside watering hose and the entered into [the neighbour's] home and threatened [the neighbour]."

In the hearing the Landlord stated there had been no other incidents or altercations between the Tenant and their neighbour. The Landlord also cited the Tenant not forwarding rent correctly in the past month, and this forms part of the reason the Landlord is seeking to end the tenancy.

The Landlord reported that the neighbour still resides in their own unit, and avoids going out when they know the Tenant is present. The Landlord reiterated that the primary concern in this community is safety. The Landlord mentioned "a number of other residents" mentioned that they are staying in their houses afraid of the Tenant.

The Tenant provided a documented timeline of events, containing the following points:

- they are not aware of any issues caused by them, individually, to other residents
- their next-door neighbour “has a history of mental health issues” and “has been hospitalized on a number of occasions”
- July 2022, the neighbour was “screaming, cursing and swearing” at the Tenant, outside the Tenant’s own kitchen window
- August 2022 – the neighbour repeated this action again, in more vile terms
- regarding the incident in question, the Tenant noted their neighbour’s “extreme distress” combined with loud music, again subject to their neighbour’s name-calling – the Tenant grabbed the garden hose and sprayed their neighbour, with only the neighbour’s “upper arm and torso” becoming wet
- the Tenant opted to rescind their notice to the Landlord to end the tenancy upon realizing the dire housing situation
- the Tenant was not advised of other complaints from their neighbour, apparently set out in a list – the Tenant cites the non-resolution of these complaints, nor the forwarding of them to the Housing Committee as “a major factor in the escalation of events”

The Tenant provided a witness’s written account that sets out that the witness observed the incident; the witness did not observe the Tenant enter the neighbour’s home. This witness is aware of the neighbour’s emotional state, and the neighbour had previously mentioned that “medications weren’t working” and their annoyance at the Tenant’s preparation of food in their kitchen.

The Tenant also provided their own direct account, sent to the manager on October 2, 2022 after the incident. This sets out the Tenant’s recollection of their neighbour’s “instant explosion” based on the Tenant’s request that the neighbour turn the music down. They set out the neighbour’s approach to the kitchen window to “rant” about the Tenant’s kitchen use. The Tenant also mentioned their own difficult personal situation that affected how they respond to more difficult issues on things.

Some time after this, the Tenant explained again to their Landlord their own personal failing in dealing with their neighbour’s erratic and verbally abusive behaviour. The Tenant also left a greeting card for their neighbour in which they set out their apology for the incident.

The Tenant also provided a response to the Landlord’s description of alleged glares and gestures to their neighbour. They listed every single contact with their neighbour.

Throughout late September through to December 20, they did not see their neighbour at all. From early 2023 to the date of the hearing, they have had no other contact with the Tenant.

In the hearing the Tenant also mentioned the fact that they have known their neighbour for 16 years. They know of their neighbour's frequent hospital visits. Regarding their neighbour's previous rants and approaches to the Tenant's kitchen window, the Tenant did not formally notify the Landlord about these separate incidents, figuring that their neighbour was in some sort of trouble.

Analysis

The *Act* s. 47(1) provides authority for a landlord to issue a notice to end a tenancy if a tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health of 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 Tenant here acknowledged their responsibility for an altercation involving their neighbour. They made the effort to apologise to their neighbour, who they have known for a long time, independent of the Landlord's notion of ending the tenancy with service of the One-Month Notice.

Before analyzing the specific pieces of the Landlord's reasons for seeking to end the tenancy, I find it important to note that the incident in question involves the Tenant spraying what I find is a minimal amount of water from a hose to the neighbour. This is marginally invasive to the neighbour, and I weigh this against the Tenant's direct testimony of repeated behaviour of the neighbour that involves yelling for what are at most minimal and temporary fleeting noise from the Tenant's kitchen, using the worst epithets imaginable in this context. This in no way excuses the action of the Tenant; however, it provides more circumstances into a extremely uncomfortable ongoing situation for the Tenant.

I also consider the Tenant's own testimony about their neighbour's frequent need to visit the hospital. I find as fact the neighbour is on some regime involving medication for their behaviour and/or emotional health. This is described directly in the witness' statement provided by the Tenant in their evidence. I conclude this lessens the true severity of the incident in question (*i.e.*, spraying water in response to being cursed out for no apparent rational reason) and its impact on the neighbour (in terms of their emotional state).

Regarding specifics of the Landlord's evidence:

- I find the Tenant did not enter the neighbour's home. It appears the Landlord is relying on the neighbour's direct report to them; however, as above I draw the accuracy of that down based on the details the Tenant provided about the neighbour's capability of extreme emotions in completely innocuous situations. A witness to the incident stated in their statement that the Tenant did not enter to the neighbour's home; therefore, I accept that as fact.
- There was no incident that "seriously jeopardized the health or safety or lawful right of another occupant or the landlord". Spraying water with a hose does not rise anywhere near the level of what s. 47(1)(b) of the *Act* is meant to address.
- The Tenant's notice to the Landlord that they would end the tenancy earlier does not form a basis for ending the tenancy. This was a single notice from the Tenant to the Landlord, afterwards recanted. There is no evidence of a pattern that was interfering with any planning the Landlord would undertake based on the Tenant's information to them. It does not constitute interference or disturbance to the Landlord.
- Additionally, the Landlord cited the Tenant's difficulties with paying rent; however, I find that was not the basis for the Landlord seeking to end the tenancy via One-Month Notice. I find the Landlord's written warning to the Tenant dated February 15, 2023, as it appears in the Landlord's record, stands as the Landlord's first proactive warning to the Tenant about this matter. It cannot form the basis for the Landlord seeking to end the tenancy some 3 months prior. The Landlord is free to pursue this matter as grounds to end the tenancy in a separate, different process.
- There was no information provided to the Tenant about others' complaints to the Landlord about the Tenant's behaviour or conduct. The Landlord described other residents being afraid; however, this is not tangible evidence without record of complaints to the Landlord being on the record, or other such evidence. I find this is a specious claim by the Landlord, and minus any record of the Landlord bringing that to the Tenant's attention previously, or evidence in the Landlord's

record, find this forms no basis for the Landlord seeking to end the tenancy via the One-Month Notice.

For the reasons above, I find the Landlord's grounds for seeking to end this tenancy are invalid. I find the Tenant's conduct – based on a single incident of minimal impact – did not arise to the level that can be described as “unreasonable” or even “significant” based on the other information provided by the Tenant about the other person involved.

In conclusion, I order the One-Month Notice cancelled. The tenancy shall continue.

Conclusion

I grant the Tenant's Application for a cancellation of the One-Month Notice. That document is of no force or effect, and the tenancy shall continue.

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: April 3, 2023

Residential Tenancy Branch