



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order granting more time than prescribed to dispute a notice to end the tenancy; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the named landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The landlord advised that all of the landlord's evidence was given to the tenant, but the tenant did not give any evidence to the landlord. Any evidence that a party wishes to rely on must be provided to the other party, even if they already have a copy, because it is important for all parties to know what is before me. Since the tenant has not provided any evidence to the landlord, I decline to consider any of the tenant's evidence. All evidence of the landlord has been reviewed, and the evidence I find relevant to the application is considered in this Decision.

During the course of the hearing, it was determined that the tenant has filed the application within the time required under the *Residential Tenancy Act*, and no further time is required. Therefore, I dismiss that portion of the tenant's application.

Issue(s) to be Decided

The issue remaining to be decided is: has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$780.00 was originally payable on the 1st day of each month, which has been increased over time and is now \$1,048.00 per month. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$390.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided by the landlord for this hearing.

The landlord further testified that on July 25, 2023 the tenant was served with a One Month Notice to End Tenancy For Cause (the Notice) by posting it to the door of the rental unit, and a copy has been provided by the tenant for this hearing. It is dated July 25, 2023 and contains an effective date of vacancy of July 31, 2023. The tenant was also provided with a covering letter, which states that the effective date of vacancy is August 31, 2023, and the landlord testified that the effective date on the Notice is a type-o. The reasons for issuing the Notice state:

- 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;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord also testified that the landlord received a report from another resident stating that a police incident occurred and that the tenant had assaulted another resident. The resident was told by the building manager to put the incident in writing, and a copy of the description of the incident has been provided as evidence for this hearing.

The illegal activity is an assault. Based on the resident's report, the resident was exiting from the fire exit door and the tenant came running at him from the street, slapped the resident's head a few times and kept choking him while yelling and making racial slurs. The resident was able to get away and go to the street, and recorded it. Then the tenant ran at the resident and took his phone.

Based on the severity of the incident, the landlord gave the tenant a One Month Notice to End Tenancy For Cause. The tenant was charged with many counts, all of which referred to the assault. A condition of the tenant's release was to have no contact with multiple people including the resident, and to not go within 50 meters of where they are.

The landlord's witness testified that the email given to the landlord describing the event was written by the witness and the witness affirms that the contents are true.

About 3 ½ months ago the witness was working from home and leaving on a lunch break through the fire exit. The tenant came and started pushing and shouting at the witness using the "N" word, saying, "What is wrong with you?" Once the tenant saw that the witness was recording, the tenant slapped the witness and held him by his shirt. The witness was able to retrieve his phone from the tenant with the assistance of a young woman and another person, but the tenant only let go of the witness when others told him to leave the witness alone. A truck driver and helper tried to remove the tenant by talking to him, but the tenant let go when he saw that others were recording. The tenant was running after the girl, who gave a witness report to police, as well as the girl's mother.

The tenant testified that he was exiting out of the fire exit and saw a person toward the back where it directly leads to the yard where people reside on the 1st floor. The resident said to the tenant, "You are Marcus' cousin," or something similar. The tenant replied that he didn't know what the resident was talking about. The resident told the tenant not to turn his back on him. The resident had a metal object and the tenant used his hand to block it, but he hit the tenant on his forehead. The tenant was knocked out for a few seconds, then opened his eyes and saw the resident running to his car. The tenant was dazed but ran toward the resident, thinking he was getting a weapon from his car. The resident made it seem like the tenant was the aggressor and told the tenant to let him go, and the tenant did so.

The tenant was supposed to meet his aunt, and saw someone take a video. While the tenant was jogging, he noticed that people were on their phones. The tenant asked the girl if she saw that. The tenant had left his phone at home and went to get it, and police showed up. The tenant was released 4 or 5 days after that.

The tenant received a fractured hand and a concussion, and a cast was put on the tenant's hand. The tenant asked for a medical report, but got a call a week ago verifying the tenant's address, and said they would send it in a week or so.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute.

I have reviewed the One Month Notice to End Tenancy For Cause, and I find that it is in the approved form and contains information required by the *Act*.

I have also reviewed the evidence provided by the landlord, including a video which is very short and does not adequately give enough information about an alleged assault. I also find that some of the landlord's evidence is not relevant.

The email provided by the witness is dated July 10, 2023. The tenant testified that it was the other resident who was the aggressor. Considering the written incident report of the resident and the testimony of that resident, I find that on the balance of probabilities, the assault took place, which is contrary to the law.

I find that the landlord had cause to issue the Notice, and I dismiss the tenant's application to cancel it.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord.

The law also states that incorrect effective dates contained in a notice to end a tenancy are corrected to the nearest date that complies with the law. Since the Notice was served on July 25, 2023 and was served by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or July 28, 2023, the effective date of vacancy is changed to August 31, 2023. Since that date has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession which may be filed in the Supreme Court of British Columbia for enforcement.

Since the tenant has not been successful with the application, the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: October 31, 2023

Residential Tenancy Branch