



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC

Introduction

This hearing dealt with an application from the tenant for cancellation of the landlord's Termination Notice To Tenant (The Residential Tenancy Act of B.C. 1984; One Month Notice under Section 27). The tenant and the landlord's agent participated in the hearing and each gave affirmed testimony.

Issue to be Decided

- Whether the tenant is entitled to cancellation of the notice

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began approximately two years ago in 2007. Currently, rent in the amount of \$750.00 is payable in advance on the first day of each month, and a security deposit of \$350.00 was collected at the start of tenancy.

The landlord served the tenant with a Termination Notice to Tenant. The notice is dated January 26, 2009 and, even while this is a One Month Notice, it shows the date by when the tenant must vacate the unit as February 1, 2009. By application for dispute resolution dated January 28, 2009 the tenant seeks cancellation of the notice. The reasons for its issuance are shown on the notice as follows:

- the conduct of the tenant, or of a person permitted in or on the residential property or residential premises by him, is such that the enjoyment of other occupants in the residential property is unreasonably disturbed;

- the tenancy agreement has been frustrated;

Documents submitted into evidence by the landlord include a copy of a letter dated February 6, 2009, which was sent to the landlord by another tenant in the building who occupies the downstairs portion of the two storied building in question. The tenant occupies one of what are two units located upstairs. In his letter the writer cites concerns about the tenant which include “her loud stereo, noise of her dog, galloping around her apartment,” an occasion when the tenant’s cat was inadvertently locked in the writer’s premises during one weekend, and an occasion when the writer claims he smelled marijuana “drifting down an unused staircase leading down from her apartment into our premises.”

Analysis

Section 44 of the Residential Tenancy Act [SBC 2002] Chapter 78, speaks broadly to **How a tenancy ends**, and provides in part:

44(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(iii) section 47 [*landlord's notice: cause*];

Section 47 of the Act addresses **Landlord’s notice: cause** and provides, in part, as follows:

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 by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

Further, however, section 47(2) & (3) of the Act states:

47(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]*.

Section 52 of the Act addresses **Form and content of notice to end tenancy** as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Residential Tenancy Policy Guideline #18 addresses **Use of Forms** and states, in part:

Notice to End Tenancy

If the landlord has served the old, single sheet Termination Notice, and seeks an order of possession based upon that notice, the arbitrator will deny the application and require the landlord to serve a Notice to End a Tenancy in the

form required by the Legislation and thereafter reapply for the order. If a tenant applies to set aside this old version of the notice, that application will be granted.

Pursuant to all of the above information, I find that the landlord's notice was not served in accordance with the current legislation and, therefore, it must be set aside.

For information, the parties are referred to Residential Tenancy Policy Guideline #6 which addresses **Right to Quiet Enjoyment**. Under the heading "Basis for a finding of breach of quiet enjoyment," this guideline states in part:

Historically, on the case law, in order to prove an action for breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;

- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

The above resource in addition to the current relevant legislation and related forms are all accessible via the website: www.rto.gov.bc.ca/

Conclusion

For the reasons set out above, I hereby set aside the landlord's Termination Notice To Tenant. The tenancy therefore continues in full force and effect.

DATE: March 13, 2009

Dispute Resolution Officer