



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, O

Introduction

This matter dealt with an application by the tenant to Cancel a Notice to End Tenancy for cause and to recover costs for moving house, television and phone services connections

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were given to the landlord on May 11, 2009. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing. The landlords confirm they received the hearing package. A significant amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Whether the landlord is entitled to an Order of Possession?
- If the landlords Notice to End Tenancy is upheld is the tenant entitled to recover the costs for moving out, phone and cable connections?

Background and Evidence

This tenancy started on October 13, 2008. This is a month to month tenancy and rent is \$1,100 per month payable on the first of each month. The tenants paid a security deposit of \$550.00 on October 09, 2008. The tenants and landlord signed a tenancy agreement setting out the conditions of the tenancy.

The tenant has applied to cancel the landlords One Month Notice to End Tenancy for Cause. The tenant testifies that the grounds the landlord has stated are not relevant to end the tenancy. The tenant states that the incidents the landlord has claimed happened due to a dispute between the tenants and the next door neighbour. The neighbour complained about the tenant's causing excessive noise, the activities of the tenant's dog, and her teenage children and their guests.

The tenant testifies that when they moved into the rental property they were the only family living on the estate. When their neighbour moved in they found it difficult to get along due to the close proximity of the houses and the way the sound traveled between them. The neighbour continually complained about the noise, the children and the dog. The tenant explains that their children and their friends would sit around at the front of the house and smoke she said they do get messy and noisy but if she had had a complaint from the landlords she would have made them sit at the back of the house. The tenant confirms that her son had a pellet gun. Her son and his friends were shooting at some raccoons. They then started to throw potatoes in the air and shoot at these. The tenant testifies that the children may have hit a window in a house and she sent them to apologize to the people in the house. Her son was made to remove the gun from the house. A man on a motor bike, who was related to a tenant whose house had been shot at, came to investigate and was shouting at the tenants' children and his

Residential Tenancy Branch
Ministry of Housing and Social Development

friends. The tenant testifies that she did not know the man but her children explained to the man what had happened and it was resolved.

The tenant testifies that her dog is very old and does not move around very much. If the dog defecates outside then it is picked up. Her dog has slept on a carpet in front of the neighbours' house but this is not usual behaviour as he stays in the house most days.

The tenant testifies that her son is on police bail and had a curfew imposed between the hours of 10.00 pm and 06.00 am. The police regularly visit the house and her son was always at home. The tenants' testifies that her son has been arrested on suspicion of breaching his bail conditions and for breaking and entering.

The landlords testify that they have received numerous complaints from other tenants about the activities from this household. The tenants children play loud music and are shouting and screaming with their friends. The landlords do not believe that by moving the children to the back of the house that this will resolve the issues with the noise and inappropriate language from the children. The landlords claim the pellet gun was used to break at least one window and have supplied photographic evidence and statements from other tenants about these issues.

The landlords testify about the incident with the man on the motorbike. They and other tenants felt threatened by this action as he came speeding into the estate on his bike and was very threatening and confrontational. They believe that this has put their property and tenants at significant risk. The evidence from the landlords shows statements from themselves and other tenants detailing days when incidents have occurred with the tenants. There has been an occasion where the children were seen prowling around parked cars and when chased away one was seen wearing a shirt that was in one of the cars. The tenant when questioned had no response to this. The

Residential Tenancy Branch
Ministry of Housing and Social Development

landlords are disturbed about the tenants' son use of a pellet gun and have contacted the police on this and other occasions about his behaviour.

The landlords have requested a decision to uphold the One Month Notice to End Tenancy and have requested an Order of Possession.

The tenant states that if she is forced to move out of the property then the landlords must reimburse her for the cost of connecting her phone and cable services as well as moving costs.

Analysis

The *Residential Tenancy Act* states that:

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

(h) the tenant

(i) has failed to comply with a material term, and

Residential Tenancy Branch
Ministry of Housing and Social Development

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

a tenant has an obligation to ensure that all occupants of the property, visitors and guests behave in a manner that is not detrimental to the safety, security and enjoyment of other tenants and landlords. As the tenant appears to have limited control over the actions of her children and their friends they have been able to cause many problems for the other tenants and landlords on the estate. The tenant has been unable to provide sufficient evidence to cancel the Notice to End Tenancy.

The incident with the man on the motor bike would not, in its self, constitute a significant risk to the landlords and other tenants as his concerns were directed at the tenants' son and his friends. However, the extreme noise levels, inappropriate language and the firing of pellet guns do constitute a significant risk to the safety and loss of quiet enjoyment of the other tenants and landlords. The actions of the tenants' children and friends have significantly contributed towards the loss of security felt by many of the other tenants who have an equal right to quiet enjoyment of their homes.

The landlords have provided sufficient evidence to uphold their Notice to End the Tenancy. They have proven that the tenants are responsible for the excessive noise levels, the irresponsible and unlawful actions of their children and guests. The landlords have provided evidence of the letters they have sent the tenants asking them to comply with the terms of their tenancy agreement and to rectify their behaviour. The tenants have failed to correct the situation in a reasonable period of time. Therefore, I uphold the One Month Notice to End Tenancy for Cause and issue the landlords with an Order of Possession.



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

I prefer the evidence of the landlords and therefore dismiss the tenant's application to cancel the Notice to End Tenancy for Cause. I further dismiss the tenants claim against the landlord to recover their moving out costs and the costs of their cable and phone services.

Conclusion

An Order of Possession has been issued to the landlord. A copy of the Orders must be served on the tenant and the tenant must vacate the rental unit **by June 20, 2009**. The Order of Possession may be enforced in the Supreme Court of British Columbia.

The tenant's application is dismissed in its entirety, without leave to reapply.

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: June 09, 2009.

Dispute Resolution Officer