

DECISION

Dispute Codes:

CNC

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The tenant did not supply a copy of the Notice ending tenancy issued on May 31, 2010. Each party had copies of the Notice before them, which I reviewed, obtaining agreement between the parties on the content of the Notice. During the hearing the tenant submitted a facsimile copy of the Notice which confirmed the agreed upon content.

Issue(s) to be Decided

Should the Notice ending tenancy for cause issued on May 31, 2010, be cancelled?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord testified that on May 31, 2010, the Notice was posted to the wrong rental unit door and that on June 1, 2010; he personally served the tenant with the Notice.

The tenancy commenced on January 4, 2010, rent is due on the first day of each month. The parties agreed during the hearing that the tenant had been assisted by a third party in obtaining the tenancy and that an advocacy group in Victoria was to be providing support to the tenant with the goal of maintaining the tenancy. The landlord was aware at the start of the tenancy that the tenant had some special needs.

The rental unit is on the 2nd floor of a 23 unit older, wood-frame building. The tenant's unit has an adjoining neighbour and other occupants in suites above and below her suite.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- Within the first week of the tenancy a complaint was made by the occupant who lived directly above the tenant in unit 304, that the tenant was repeatedly banging on the suite door, complaining that the occupant was being too noisy;
- That the occupant in 304 moved out due to disturbances caused by the tenant;
- That the new occupant of 304 moved in on March 1, 2010, for a fixed term tenancy to March 2011, and that on May 25, 2010, notice was given ending the tenancy early due to disturbances caused by the tenant;
- That the landlord accepted Notice from 304 as he knew the tenant had been unreasonably disturbing the occupant;
- That on May 30, 2010, new occupants moved into unit 304 and complained to the landlord that the tenant banged on their ceiling for 5 minutes, yelled at them, that for approximately 5 minutes she swore at the occupant through the window, that any time they walk across the floor the tenant begins to bang on her ceiling;
- That on 5 occasions the landlord gave the tenant notes warning her of the problems she was causing to others in the building, but that copies of these hand-written notes were not retained by the landlord;
- That the landlord spoke with the tenant on at least 5 occasions, asking her to cease the behaviors that were disturbing other occupants;
- That the verbal warnings given to the tenant requested that she cease wandering the halls of the building, banging on other people's doors and banging on the ceiling of her unit;
- That on May 24, 2010, a letter, submitted as evidence, was posted to the tenant's door warning her that her tenancy could end as a result of disturbances, harassment by pounding on walls, doors and ceilings of other units;
- That the support worker for the tenant told the landlord not to speak directly to the tenant any longer in relation to problems, as she found this too disturbing and that all complaints should go to the worker;
- That on 7 or 8 occasions the landlord called the support worker that had been identified at the start of the tenancy who was to assist but that this person did not respond to the landlord's concerns or provide any intervention; and
- That when personally served with the Notice on June 1, 2010, the tenant commented she knew she would be evicted.

The landlord's letter dated May 24, 2010, referenced an incident involving another occupant who was moving out at the end of February, 2010. The landlord alleged that the tenant grabbed this person by the throat and threatened to strike him, that 3 other occupants called the police and that the police determined the tenant was of a fragile mental state and required professional intervention. The landlord testified that after this

incident the tenant was given a note informing her that this behaviour was unacceptable and could terminate her tenancy.

The landlord supplied as evidence 3 notes written by other occupants of the building, alleging disturbances caused by the tenant, such as yelling, accusing others of making noise, pointing her finger in an occupants face, apparent angry behaviour, that she continually bangs on the ceiling of the upstairs unit, that she makes them nervous due to yelling and repeated accusations by the tenant that they are being too noisy.

The landlord supplied a note dated June 13, 2010, from the occupant who moved into unit 304 in March, 2010. This note indicated that on several occasions since she moved in the tenant would repeatedly bang on her ceiling, complaining of noise and that at one point the tenant had come to her door, very upset and yelling due to noise caused by the occupant's granddaughter. After this incident the granddaughter did not wish to visit at the unit.

The landlord testified that he has worked in the building as a caretaker for twenty years and that he made every attempt to assist this tenant, even though some of her requests were unconventional. When the tenant thought another occupant had entered her rental unit the landlord changed the locks to her unit, and when she complained about the lights from the parking lot, he removed light bulbs, so she would not be bothered by the light.

The landlord submitted a copy of a May 31, 2010, email sent at 9:10 a.m. from the caretaker to the owner of the property management company in which the caretaker stated that he "spoke to various people "in charge" of her but did not get any direct help to resolve the situation. My effort is exhausted, and to prolong the agony and fear the tenants have is negligent. The peaceful enjoyment of their homes must be restored." Once this email was received the owner immediately requested that the Notice ending tenancy be issued to the tenant.

The tenant presented the following evidence and arguments in support of the Application to cancel the Notice to End Tenancy for Cause:

- That she did not receive the May 24, 2010, warning letter until served with evidence for this hearing as she was away for 3 days and when she returned on May 27, 2010, there was not a letter on her door;
- That the tenant does have special needs which cause her to be sensitive to sounds and to experience difficulty interacting with others;
- That the tenant keeps a diary and has no record of any past written or verbal warnings given by the landlord;
- That there was an altercation with another occupant at the end of February or early March, as this occupant was moving out, that he had called the tenant a derogatory name which resulted in "setting the tenant off;"
- That she is not aggressive but does experience problems controlling the volume of her voice;

- That the tenant has attempted to resolve issues she has with other occupants;
- That sounds easily travel through the building due to the age and construction of the building;
- That the landlord was made aware of the tenant's special needs prior to the tenancy commencing; that the landlord should not now be surprised and should be more patient;
- That the incident related to the granddaughter visiting unit 304 was the result of the granddaughter dragging her cast along the floor and when the tenant realized this she apologized for complaining;
- That the time between the May 24, 2010, letter was issued and the Notice ending the tenancy was given did not allow the tenant adequate time to alter her behaviour;
- That the landlord has not provided sufficient evidence proving the tenant has significantly interfered with or unreasonably disturbed other occupants;
- That derogatory comments contained in evidence submitted by the landlord show bad faith on the part of the landlord; and
- That the comment made by the tenant at the time the Notice was served was the result of the tenant having experienced past negative outcomes with tenancies.

During the hearing the parties discussed a possible mutual agreement to end the tenancy but were unable to do so. The landlord stated that they understand the effective date of the Notice is July 31, 2010, and that they want possession of the unit by that date as they cannot risk losing more occupants.

Analysis

After considering all of the written evidence and testimony submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord accepted this tenant in the knowledge that she faced some challenges and in the expectation that some level of support would be offered to help maintain the tenancy. The landlord submitted that despite a number of telephone calls to the support worker, no assistance was provided. There was no evidence before me or testimony to counter this submission.

I find the landlord's testimony that he repeatedly spoke with the tenant, in an attempt to have her adjust her behaviour, convincing and cohesive when considered in combination with his attempts to obtain assistance from a support worker. Despite the unfortunate notes written in the evidence by the landlord, I find that the landlord did make attempts to accommodate the tenant by providing her with a new lock to her unit and by removing lights from the parking area that bothered her.

Section 28 of the Act provides:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

As provided by the Act, the landlord must offer an environment to all occupants, which must be free from unreasonable disturbance and significant interference. The landlord has lost 2 occupants due to the behaviour of the tenant and allowed one of these occupants to terminate a fixed term tenancy, without penalty, in recognition of the disturbances caused to that occupant by the tenant who lived in the unit below. The willingness of the landlord to allow an occupant to break a fixed term lease demonstrated the degree of the problem faced by the landlord and other occupants, as a result of the tenant's behaviour.

I have considered the submission of the tenant that the disturbances caused to others were not unreasonable and find, on the balance of probabilities, that disturbances caused, to the point of instigating a move by another occupant, indicate that the occupant has found the situation intolerable. The tenant may not intentionally set out to disturb others, but the impact of her behaviour on others must be considered.

In reaching this decision I referred to *Black's Law Dictionary, sixth edition*, which defines unreasonable, in part, as:

“irrational; foolish; unwise; absurd; silly; preposterous; senseless...”

I find that this definition does not place the tenant's behaviour outside of the realm of unreasonable. It is unfortunate that the tenant faces challenges that may cause her to be misunderstood or less resilient in relation to the sounds of day to day living caused by other occupants, but the landlord has a responsibility to all occupants and cannot place the needs of one occupant over the needs of the others.

I have also considered the tenant's submission that she was not aware of the May 24, 2010, letter of warning, prior to the Notice being issued on May 31, 2010. The tenant disputed receipt of any written notes of warning and of any of the landlord's verbal requests that she adjust her behaviour.

I find, on the balance of probabilities, that the landlord did speak with the tenant requesting she adjust her behaviour. I base this, in part, on the May 31, 2010 email sent to the owner of the property management company referencing his attempts to obtain assistance from others. I found the landlord's testimony in relation to the

warnings given consistent with his undisputed testimony that he had repeatedly attempted to have the advocates intervene.

I also find the landlord's undisputed testimony that he had been directly communicating concerns to the tenant and was then asked by the advocate to channel complaints through them, convincing. These efforts by the landlord failed, the behaviours did not cease, other occupants continued to be disturbed, new occupants have reported the same disturbances, which resulted in the landlord finally issuing the Notice ending the tenancy.

Therefore, I find that the tenant has caused an unreasonable disturbance to other occupants of the rental unit and that her Application is dismissed.

During the hearing the landlord stated that they wished to have the tenant vacate the rental unit by the end of July. Pursuant to sections 47(2) and 53(1) of the Act; a 1 Month Notice ending tenancy for cause personally served to the tenant on June 1, 2010, is effective July 31, 2010.

Section 55(1) of the Act determines that if a tenant's Application to cancel a Notice is dismissed, a landlord may request an Order of possession. Therefore, as the landlord has asked that the tenant move out by July 31, 2010, I find that the landlord is entitled to an Order of possession effective July 31, 2010, at 1 p.m.

Conclusion

I have determined that the landlord has submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(d)(i) of the Act.

The tenant's Application to cancel the Notice issued on May 31, 2010, is dismissed.

The landlord has been granted an Order of possession that is effective July 31, 2010 at 1 p.m. This Order must be served on the tenant, filed with 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: July 22, 2010.

Dispute Resolution Officer