



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated January 10, 2011.

Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled. This requires a determination of whether the tenant or persons permitted on the property by the tenant:
 - significantly interfered with and or unreasonably disturbed other occupants or the landlord or;

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end Tenancy under the Act.

Background and Evidence

The tenancy began as a fixed term on July 26, 2010 with rent of \$360.00. Submitted into evidence by the tenant was a copy of the One-Month Notice to End Tenancy for Cause dated January 10, 2011, a copy of a page from the tenancy agreement, photographs of the exterior area of the complex, written testimony from the tenant about incidents during her tenancy, copies of warning letters to the tenant from the landlord and a copy of a newsletter.

The landlord submitted a copy of the tenancy agreement, written testimony, copies of reports and complaints, and copies of warnings sent to the tenant dated August 25, 2010 and January 10, 2011.

The landlord testified that the One-Month Notice to End Tenancy was issued because of the tenant's disruptive conduct and unreasonable interference with other residents. The landlord testified that prior to this notice, the landlord had issued two warning letters and had conversations with the tenant about objectionable conduct including bothering other tenants while ranting about the dangers of radiation, hostility towards staff and using profanity. The landlord testified that after the first warning letter was issued in August, the tenant then caused a disruption in September affecting members of the art group in the complex when she attended. The landlord testified that that her inappropriate outbursts had generated complaints.

The landlord testified that it was discovered on December 20, 2010 that the tenant had removed exterior light bulbs which was a violation of her lease agreement and she was verbally cautioned, but apparently repeated this conduct in January. The landlord testified that on December 30, 2010 the tenant was also heard yelling profanity at the landlord's staff. The landlord testified that the tenant was sent a second written warning letter on January 7, 2011 regarding the conduct.

The landlord testified that after the letter was served, the tenant came to the office to complain that she was being picked on and as she left loudly called the Administrator an obscenity in front of another staff member before slamming the door. The staff member appeared as a witness during the hearing and confirmed that this incident did transpire as described by the landlord. The landlord testified that the One Month Notice to End Tenancy for Cause was issued because of the tenant's abusive treatment of employees and other conduct that she refused to correct despite repeated warnings. The landlord stated that the tenant's unpredictable and hostile behavior has generated a climate of fear when she is present.

The tenant disputed the allegations made by the landlord. The tenant testified that in August when she used profanity, this was done in self defense against an attack by a male staff member. The tenant stated that there was no police involvement. With respect to the accusation that she bothered residents about the issue of radiation, the tenant stated that other occupants were actually curious about the hazards and did not object to discussing this concern. In regard to the incident involving art group members, the tenant stated that she was merely expressing her opinion and subsequently decided not to participate in the group. The tenant denied yelling out any expletive at staff members on December 30, 2010. In regard to the removal of light bulbs the tenant pointed out that she has a sensitivity to the electricity and mercury in the bulbs. With respect to the incident that occurred on January 10, 2011, the tenant testified that the landlord and witness's description of what happened was exaggerated and that, in fact, she had only called the Administrator the obscene name under her breath and had not slammed the door, merely closed it. The tenant denied that she was ever abusive or

hostile to anyone nor that she had significantly interfered with or unreasonably disturbed the landlord and other residents.

Analysis – Notice to End Tenancy

It is necessary to establish whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47 of the Act.

The Guideline gives examples of what may constitute "significant Interference" including serious examples of:

- unreasonable and ongoing noise;
- persecution and intimidation;
- engaging in destructive or violent behaviour

In regards to the term, "unreasonably disturbed", Black's Law Dictionary defines "unreasonable" as:

"Irrational; foolish; unwise; absurd; preposterous; senseless;...
immoderate; exorbitant; ...capricious; arbitrary; confiscatory."

In this instance I find that the tenant had engaged in conduct that other residents and the landlord found to be disruptive. I find that the landlord received numerous complaints about the tenant's language and disturbing behaviour towards the landlord's employees and other residents. I find that the tenant was warned to cease this conduct verbally and in written form and the tenant still persisted in engaging in the offensive conduct.

Given the above, I find that the Tenant's Application requesting that the Notice be cancelled is not supported under the Act by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application without leave. I hereby grant the landlord an Order of Possession effective Monday, February 28, 2010 at 1:00 p.m.

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: February 04, 2011.

Residential Tenancy Branch