



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This conference call hearing was reconvened following an adjournment on February 8th, 2011, in response to the tenant's application for cancellation of a 1 Month Notice to End Tenancy.

The landlord and R.H., speaking for the tenant, originally attended the hearing. R.H. stated that he had no evidence to present on the tenant's behalf and requested a further adjournment to allow the tenant to recover from surgery. The landlord objected; he stated that he saw the tenant at the complex on March 7th, 2011; that she was walking and was surrounded by friends; and that the tenant made no attempts to contact him concerning this matter. R.H. interrupted and embarked on a series of accusatory remarks against the landlord and the landlord's evidence. He stated that the tenant was in the room and I requested that she be put on the line. The tenant was coherent; she acknowledged receipt of the landlord's documentary evidence; she was provided an opportunity to respond and the hearing proceeded.

Accordingly, both parties provided affirmed testimony: they were given a full opportunity to be heard and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the notice to end tenancy?

Background and Evidence

The rental unit consists of an apartment in a subsidized housing complex. Pursuant to a written agreement, the month to month tenancy started on July 1st, 2008. The tenant's portion of the monthly rent is \$337.00, payable on the first of each month. The tenant paid a security deposit of \$500.00.

In his documentary evidence, the landlord provided several complaint and warning letters which included, but was not limited to:

- A chronological account of 18 incidents involving the tenant's daughter, her friends' behaviour, and the need for police attendance. These incidents were recorded between the period from April 20th, 2010 to January 16th, 2011.
- A letter describing an incident on November 25th, 2010 wherein a man who reported living at the tenant's residence tried to coerce the letter carrier to open the tenant's mail box and intimidated the onsite caretaker.
- A complaint letter dated September 8th, 2010 from the tenant's next door neighbour who witnessed an intoxicated young man urinating in plain view of the neighbour's 5 year old daughter.
- A warning letter dated October 12th, 2010 from the property manager concerning the tenant's visitors urinating in the bushes on the back patio.
- A written complaint dated November 20th, 2010 concerning loud music coming from the tenant's suite, and an ensuing confrontation with a man who answered the door.

The tenant testified that she had not been made aware of several of the above noted incidents. She stated that she spoke to her daughter and that she has made attempts at controlling the people who come to the unit, to which her daughter agreed.

The tenant stated that she is still recovering from surgery on February 17th, 2011. She stated that many of the problems would not have happened had it not been for her current medical condition. She was at the hospital for a week then stayed at her mother's residence for post surgery recovery. During that time, the tenant said that R.H. stayed at the unit with her daughter in order to keep things under control.

The landlord argued that the tenancy agreement places an obligation on the tenant to inform the landlord of visitors staying for extended periods of time. He stated that the tenant advised him that her sister would be staying at the suite, but that he only saw the sister once in contrast with other numerous unidentified occupants, whom he submits are not staying only to assist in the tenant's recovery. The landlord reported another more recent incident involving R.H. and the police on March 8th, 2011.

Finally, the landlord noted the dates of service of the 1 Month Notice to End Tenancy. He testified that the notice was first sent by registered mail on December 10th, 2010, and that it was returned to sender as unclaimed. He stated that the notice was then placed in the tenant's mailbox on January 6th, 2011, and served personally to the tenant on January 13th, 2011. The tenant claimed that she did not have knowledge of the notice until she received it on January 13th, 2011.

Analysis

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for cause does not make an application for dispute resolution within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. The tenant has not filed an application for dispute resolution and I find that the landlord is entitled to an Order of Possession.

While I heard the tenant's submissions, I am not persuaded that the landlord did not have grounds to end this tenancy.

Section 28 of the *Residential Tenancy Act* provides in part that a tenant is entitled to quiet enjoyment including, but not limited to; reasonable privacy and freedom from unreasonable disturbance. The tenant did not dispute that there were problems with some of her visitors that disturbed other tenants and neighbours in the complex.

Conclusion

The tenant's application is dismissed. Pursuant to section 55(2) of the Act, I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in 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: March 11, 2011.

Residential Tenancy Branch