



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 March 2, 2011.

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

Preliminary Matter: Respondent's Evidence

The applicant tenant had served the Application and documentary evidence on the landlord including a copy of the One-Month Notice to End Tenancy for Cause dated March 2, 2011 indicating that the landlord was ending the tenancy because,

- the tenant was repeatedly late paying rent;
- the tenant or a person permitted on the residential property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and put the landlord's property at significant risk and
- the tenant or a person permitted on the residential property by the tenant had engaged in illegal activity that had adversely affected or was likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

However, in the landlord's evidence package, the landlord had submitted a copy of the One-Month Notice to End Tenancy for Cause dated March 2, 2011 as well. However, the landlord's copy in evidence indicated that that the landlord was attempting to end the tenancy based on all of the above reasons but showed two additional causes that were not indicated on the tenant's copy of the Notice. These included the following:

- there was an unreasonable number of occupants in a rental unit;

- the tenant had breached a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Through examination, it was confirmed by the landlord that she had submitted into evidence an altered copy of the One-Month Notice to End Tenancy for Cause dated March 2, 2011 that had never actually been served on the tenant. Accordingly, I found that the landlord's evidentiary submission, with respect to the copy of the One-Month Notice to End Tenancy for Cause, was false and misleading and therefore would not be considered as evidence. The landlord requested that the remainder of her evidence package be considered, without the tainted evidence in question, and this request was granted.

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 or not it was proven that:

- the tenant was repeatedly late paying rent;
- the tenant or persons permitted on the property by the tenant had significantly interfered with and or unreasonably disturbed other occupants or the landlord or; put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant had engaged in illegal activity that had adversely affected or was likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

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

Background and Evidence

Submitted into evidence by the tenant was a copy of the One-Month Notice to End Tenancy for Cause dated March 2, 2011 with an effective date stated as April 2, 2011.

Submitted into evidence by the landlord was written testimony, a copy of the landlord's bank statements and copies of communications between the parties including undated letters from the tenant to the landlord regarding late rental payments,

The tenancy began in 2006 and the rent is \$825.00. The landlord testified that the tenant's repeated late payment of rent occurred throughout the five-year tenancy, and the landlord referred to past letters from the tenant discussing late payments. The landlord testified that the most recent three occurrences were in February 2010, September 2010, and October 2010.

The tenant did not dispute the past late payments, but pointed out that one of the three incidents occurred over a year ago, the last time occurred five months ago and that she has not paid late since then. The tenant also pointed out that the letters in evidence referenced by the landlord were written three years ago. The tenant also testified that the landlord had never issued any formal Notices to End Tenancy for late rent at any time prior to now.

The landlord testified that she had also issued the One-Month Notice to End Tenancy because of ongoing problems with noise by the tenant. The landlord testified that the tenant has recently been irresponsible about controlling the noise level, particularly after-hours, and foul language that carries into the landlord's suite. The landlord testified that, in addition to the disturbances themselves, the tenant's disrespectful and hostile response to the landlord's requests to keep the noise down has been a cause for concern. The landlord testified that she even found it necessary to contact the police.

The tenant disputed that there was ongoing noise of a level that was excessive. The tenant stated that the walls are "paper thin" and pointed out that substantial noise and conversation coming from the landlord's suite could be heard by the tenant as well. The tenant stated that, in order to prevent the landlord from hearing the tenants, she has been forced to direct her children to speak in whispers. The tenant stated that, while there were instances in the past where her children or their friends were too loud, the tenant had dealt with these situations immediately and apologized to the landlord. The tenant stated that there have been no disturbances lately and the Notice should be cancelled.

With respect to the landlord's allegation that the tenant put the landlord's property at significant risk, the landlord stated that the tenant had removed the screens on the windows on several occasions so that access could be gained to the suite without a key to the door. The tenant acknowledged that this had been done in an emergency situation but it was not a usual practice and she felt that it did not place the property at significant risk. The landlord also took issue with the tenant smoking in the unit, an allegation that was vehemently denied by the tenant.

With respect to the other cause that the tenant was engaged in illegal activity that had adversely affected or was likely to adversely affect the quiet enjoyment, security, safety

or physical well-being of another occupant of the residential property, the landlord stated that this particular cause was not relevant to the situation.

The landlord feels that the One Month Notice to End Tenancy for Cause should not be cancelled and should the tenant's application be dismissed, she seeks an order of possession.

Analysis

With respect to the ground of repeated late payment of rent, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement and I find that there were occasions in which the tenant failed to meet this obligation under the Act. However, given that late payments had apparently not been a serious concern between these parties in the past during the tenancy, and the fact that one of the incidents of a late payment dates back to January 2010, I find this cause insufficient to justify ending the tenancy.

With respect to whether or not the tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, sufficient to warrant ending the tenancy under section 47 of the Act, I find that section 28 of the Act protects the right to quiet enjoyment and states this includes but is 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.

I also find that the Residential Tenancy Guidelines give examples of what may constitute "*significant Interference*" including serious examples of: unreasonable and ongoing noise; persecution and intimidation; or engaging in destructive or violent behaviour. (my emphasis)

In regard 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 at times engaged in conduct that the landlord and other residents found to be disruptive. I find that the landlord spoke to the tenant and warned her more than once about the noise. I find that, despite the verbal warnings problems continued.

Tempering the above, however, is the fact that exposure to noise between units can depend upon the age and structure of the building in relation to how sound carries or

what floor covering is used. The fact is that some complexes are more sound-resistant than others. I find that this particular residence consisted of an upper and a lower suite. Under such circumstances, I find it unlikely that a building converted to include a rental unit would be as sound-proof as a suite within a modern rental complex specifically constructed for this purpose would otherwise be. Moreover, I find that the term “*unreasonable disturbance*” is a subjective determination that widely varies from one individual to another. I note that the perception of what level of noise is “reasonable” can be influenced by the sensitivity or subjectivity of a particular occupant. Diversity in terms of lifestyle is also a factor. For example a shift worker may be active during a period of time when another occupant accustomed to keeping typical hours may tend to expect things to be silent.

However, despite any possible deficiencies that may or may not exist in the infrastructure of the building, I do accept that, on a balance of probabilities, the tenant did unreasonably disturb the landlord, after being cautioned on more than one occasion. On this basis, I find that the tenant’s Application requesting that the One-Month Notice to End Tenancy for Cause be cancelled is not supported 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. I therefore issue an Order of possession effective May 31, 2011.

Conclusion

Based on the evidence and the testimony discussed above, I dismiss the tenant’s application without leave. I hereby grant the landlord an Order of Possession effective Tuesday, May 31, 2011. 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.

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 2011.

Residential Tenancy Branch