



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC; OLC

Introduction

The tenant has applied to cancel a 1 Month Notice issued ending the tenancy for cause and an Order the landlord comply with the Act.

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 relevant evidence submissions referenced at the start of the hearing and confirmed received by the parties have been reviewed. The parties were given the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The tenant indicated several matters of dispute on her application and confirmed that the main issue to be dealt with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I considered the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

The landlord submitted three anonymous letters of complaint issued by other occupants of the complex, in support of the Notice ending tenancy. The landlord stated people are afraid to put their names on notes, in fear of retaliation by the tenant. I explained that anonymous reports would be given little weight, as they do not allow the tenant to fully respond.

Issue(s) to be Decided

Should the 1 Month Notice Ending tenancy for Cause issued on December 6, 2011, be cancelled?

Background and Evidence

This tenancy commenced on April 17, 2009; rent is due on the first day of each month and is currently \$213.00 per month. The tenant lives in one of 42 units that are part of a subsidized housing complex. The parties both acknowledged that the tenant moved into the unit without any expectation the units or property was non-smoking; the landlord confirmed that none of the tenancy agreements in the complex prohibit smoking on the property.

The parties agreed that on December 6, 2011, a hearing was held (file 784409) to cancel a 2 Month Notice Ending Tenancy. The landlord had wished to give the tenant an additional period of time to vacate and issued an incorrect Notice.

The landlord and the tenant agree that on December 6, 2011, a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant is required to vacate the rental unit on January 30, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Landlord's Submission

The landlord testified that since the start of the tenancy the tenant has been difficult, demanding, hostile, and disrespectful and that she has bullied other occupants and the landlord. The landlord set out a number of incidents that resulted in the Notice for cause being issued on December 6, 2011.

The landlord submitted that they have responded to concerns expressed by the tenant, such as replacing carpet, moving a dryer vent and encouraging neighbours to turn down music and move away from the tenant's carport, when they smoke.

November 8, 2011

On November 8, 2011, the tenant became upset with her neighbour, C.G, as he was playing loud music in the early evening, after the tenant had put her children to bed.

In a written statement supplied as evidence the neighbour alleged that on November 8, 2011, the tenant came to his door while he was watching videos; he answered his door and the tenant became confrontational and refused to leave. C.G. made multiple requests that the tenant leave his property. C.G. found the tenant to be unreasonable and rude and asked that she not be allowed to attend at his door again. C.G. indicated he has lived in the unit for 3 months and feels the tenant is looking for confrontation. The statement indicated that the tenant had accused him of being drunk; he had only been sipping on a beer.

C.G.'s daughter also wrote a statement in which she agreed music was playing on their TV; they were watching videos. At first the tenant had banged on their wall, so they turned the volume down. Then the tenant came to the door and refused to leave. The daughter agreed that she "got in her face" as she did not appreciate her father being mistreated. She felt that the tenant was acting as if she owned the property.

In response to the complaint from C.G. the landlord wrote the tenant a letter dated November 14, 2011. The November 14, 2011, letter was accompanied by a 2 Month Notice ending tenancy; which was subsequently replaced by a 1 month Notice ending tenancy that was the subject of this hearing.

The November 14, 2011, letter indicated the landlord had considered versions of the events given by each party and that she determined this was the 5th time the tenant had verbally attacked a neighbouring occupant. The landlord reminded the tenant that on 2 occasions she had been forced to ask the tenant to leave her office; that the tenant has left voice mail messages that were inappropriate and that the tenant had agreed she has been angry when leaving messages. The landlord reminded the tenant they have talked about her behaviour and that it would not be accepted. The landlord indicated that a number of the occupants have had issues with spousal or child abuse; that the landlord takes her behaviour very seriously and has made it clear they would not tolerate aggressive behaviour.

A May 31, 2011, note was supplied as evidence by the landlord. This note indicated the landlord had talked with C.G. on that date, in regard to the playing of loud music. C.G. was warned that he and his daughter should keep the music turned down. The landlord stated they had not been made aware of the music problem at the time the tenant contacted the bylaw enforcement office in September, 2011.

September 2011

On September 9, 2011, the landlord issued a letter to the tenant indicating she and several Board members had listened to a voice message left by the tenant. The landlord indicated the Board would be discussing the tenant's complaints in relation to smoking and asked that the tenant not harass her neighbours. A neighbouring occupant had reported being very upset the day prior, as the tenant had been yelling at them from her window. The landlord pointed out that the tenant had been aware at the time she moved into the complex that it was a smoking environment, yet she was continually upset with her neighbours who smoke.

The landlord issued the neighbours a September 9, 2011, letter asking they be conscientious about smoking, such as the time of day and where they smoke. A copy of this letter was supplied as evidence. The landlord informed the neighbours that the tenant would receive a letter from the Board stating her behaviour was unacceptable and they were reminded they did not need to adjust their life for their neighbour, but that perhaps they could be conscious that smoke does bother her.

The landlord played the voice mail recording the tenant left for the landlord outside of work hours. In that message the tenant could be heard saying that smoke could not be tolerated, that “this was not going to happen” and that the health of the tenant’s children was at risk. The tenant stated the landlord had to do something or the tenant would file for dispute resolution. The tenant raised her voice and was yelling.

On September 13, 2011, the landlord wrote the tenant a letter, a copy of which was given to the tenant on September 20, 2011. A copy was supplied as evidence. The letter recognized the conflict the tenant was having with her neighbours in relation to them smoking outside. The Board member indicated the tenant’s voice message had indicated she was not willing to wait for the landlord to respond; that she had demanded they do something immediately. The tenant was reminded that in the past she had been threatened with eviction as the result of what the landlord felt was on-going harassment of their agent in relation to an issue with carpet. The landlord reminded the tenant she had moved into a complex that did not guarantee a smoke-free environment and that tenants are allowed to smoke in their units and carports. The landlord suggested the tenant attempt to locate accommodation where she could be happier and, if she could not abide with the landlord’s decision in relation to smoking she must not harass her neighbours, or it would be considered cause for eviction.

A copy of a September 15, 2011, note written to the landlord by one of the tenant’s neighbours; was supplied as evidence. The neighbour reported another incident with the tenant at 7:15 a.m. on September 14, 2011, when the tenant had come outside yelling as a response to the neighbour smoking outside. The tenant then reportedly left and slammed her door. The note indicated the landlord had called the tenant and left a message that yelling at neighbours for doing something on their own property constituted harassment and that the issue would be reported to the Board.

On October 3, 2011, the tenant wrote the board a letter indicating she could not find other suitable accommodation as smoke-free low income housing was not available elsewhere. The tenant asked the landlord to institute a smoking bylaw.

A copy of September 27, 2011, note on the neighbour’s file was submitted as evidence outlining a requesting they move a table in their carport, so it was not near the tenant’s unit. This request was an attempt to accommodate the tenant who had complained of smoke entering her unit. The neighbour told the landlord she had been treated so badly and yelled at so many times by the tenant that she was not willing to be bullied. The neighbour stated she had been attempting to smoke away from the building, but she had no control over where her spouse and children smoked.

February 2010

The landlord supplied a copy of a February 10, 2010, letter issued to the tenant by a Board member. The letter referenced an incident that occurred the previous week. The tenant had complained about some frayed carpeting and the landlord and tenant had met to discuss repair in an attempt to find a solution. The board member alleged the

tenant had “continually (taken) shots at our Administrator over past issues that in our mind have been resolved.” The Board member stated the tenant fought with the administrator during the meeting and that if the landlord had talked to the tenant in the same manner the tenant used, the tenant would consider the behaviour harassing. The landlord warned the tenant they would not tolerate harassment that she must handle issues in a subdued manner and that future behaviour that was demonstrated during her meeting would be considered harassment and cause to end the tenancy.

Tenant’s Submission

The tenant testified that she has been the victim of the landlord’s inability to manage issues that have been presented. The tenant testified that she has wanted to relocate, that the landlord is making false accusations and that the tenant is being harassed by the landlord, who she finds intrusive. The tenant asserted she has never behaved in a hostile or harassing manner and that if she pressed issues she would be told her tenancy would end and she could move.

Copies of a 2007 letter from a previous landlord describing the tenant as an excellent occupant and another from 2007 described the tenant as a wonderful neighbour; were supplied as evidence.

The tenant had 2 witnesses who did not testify. One witness was prepared to testify that she had known the tenant during a previous tenancy and that she had been a good tenant who did not act inappropriately. I accepted that the witness would provide this submission.

The 2nd witness was prepared to corroborate the tenant’s version of events that unfolded during the meeting with the landlord in February, 2010. The tenant did have a witness testify in relation to his recall of that meeting.

November 9, 2011

The tenant testified that the music was very loud, that she had made previous complaints to the landlord and that the neighbouring occupants had been warned. The tenant denied she had been confrontational with her neighbours or that she harassed him and stated that the neighbour was intoxicated.

The tenant submitted a copy of a November, 9, 2011, letter given to the landlord in which she indicated that in May, 2011, she had made 3 verbal complaints to the office in relation to loud music. The noise had recommenced in September, 2011 and on September 29, 2011, the tenant had made a complaint to the City of Penticton by law enforcement office, who stated they would contact the landlord. No problems recurred until the evening of November 8, 2011. The tenant alleged the neighbour playing the music was hostile and belligerent and that his daughter swore at her. The tenant submitted that after talking with the neighbour she quickly returned to her unit.

September, 2011

The tenant acknowledged the taped voice mail message as one she had left for the landlord. The tenant stated that in the past the tenant had been told to speak with the other occupants and, then when the tenant did so, she would receive a letter alleging harassment. The tenant stated she had had a bad night as a result of smoke entering her home, that her children could not sleep and that she was afraid for her children.

On September 21, 2011, the tenant wrote the Board a letter in which she accused the Board of having predated their September 13, 2011 letter of warning. The tenant asserted that the conversation had not occurred and the allegation was slanderous, hostile and retaliatory, as a result of the tenant's September 19, 2011, letter in which she had complained of 2nd had smoke entering her unit. A copy of both letters was supplied as evidence.

February 2010

The tenant recalled being in a meeting with the landlord and a Board member during February, 2010. The tenant's witness provided affirmed testimony that he was present during this meeting. Upon questioning by the landlord, the witness could not recall the details of the discussion that occurred, or the specific date of the meeting. The witness stated he was talking with a Board member during the time the tenant and the administrator were speaking and that he could not recall the details of their conversation.

The witness stated that he stood by his November 24, 2011, signed statement that was submitted as evidence by the tenant. The witness stated that the tenant is not aggressive but that she will stand up for herself and what she believes in.

The tenant submitted a written statement signed by her witness in which the date of the February 2010, meeting and an outline of the conversation were provided. The signed statement indicated the tenant was berated and interrupted and that the landlord told the tenant the matter was closed and that further mention of the problems could be cause for eviction.

Analysis

In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the relevant written and oral evidence 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.

In reaching this conclusion I considered the incidents involving the tenant and her neighbour that have interfered with the rights of other occupants.

In consideration of the reason given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

“To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others.”

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord provided sufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed her neighbours by interfering with the neighbour's right to quiet enjoyment, as provided by section 28 of the Act:

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.*

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony. The real test of the truth of the story must align with the balance of probabilities and, in the circumstances before me; I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the landlord over the tenant.

I find that the tenant's assertion she has not yelled at her neighbours or confronted other neighbours in an aggressive manner lacked credibility. I have based this, in part, on the audio tape played, in which the tenant could clearly be heard yelling at the landlord. This behaviour indicated that the tenant can indeed act in an aggressive manner and contradicted the tenant's testimony that it is she who is being victimized by the landlord. The tenant explained her tone on the recording as the result of her frustration and fear for her children's safety. I have not accepted this reasoning, as it fails to recognize the impact of this type of repeated behaviour on others.

The written statements supplied by the neighbour and his daughter were issued independently and each described the event from an individual point of view. I find the allegation that the tenant acted aggressively with her neighbours in November as a result of loud music is supported by the evidence before me. Even if the music had been unreasonably loud a tenant has no right to confront other occupants in a manner they might find excessive or threatening.

The tenant believed she had a right to interfere with her neighbours as the landlord had told her to talk to neighbours if there were problems. I find, on the balance of probabilities, that this submission lacked the ring of truth. There was ample evidence of the landlord having addressed concerns expressed by the tenant and nowhere was there evidence that the landlord suggested the tenant confront other occupants in the manner reportedly used by the tenant.

In relation to the conflict with her neighbours who smoke outside, I find, on the balance of probabilities that the landlord has provided adequate evidence to support the Notice ending tenancy as the result of the tenant repeatedly yelling at the neighbours. The neighbours have told the landlord that the tenant has yelled at them, bullied them and essentially interfered with their right to quiet enjoyment. The landlord has provided evidence of past written warning given to the tenant; all while the landlord has taken steps to address concerns expressed by the tenant.

The tenant has indicated she is upset with the right of her neighbours to smoke and that she is fearful for her children's health; however, this concern does not allow the tenant to interfere with the rights of other occupants as provided by the Act. I have accepted the landlord's submission that the tenant was given warnings and that those warnings were based upon legitimate concerns. A landlord can expect to deal with tenants who pose some challenges; however, other occupants are entitled to the quiet enjoyment of their homes.

In relation to the tenant's witness, who during the hearing stated he could not recall the February 2010 meeting date or what was said; I found his testimony failed to support the statement he signed. The witness signed a statement that included the date of that meeting and the details of what was said during the meeting; yet during the hearing he testified he had no recall of those facts. Therefore, I placed little weight on the witness' testimony.

Events that occurred in February 2010, had limited value in supporting my decision. However, I find that the letter given to the tenant in February 2010; indicated that the landlord was finding the tenant difficult and disrespectful.

I have rejected the tenant's submission that she is the victim in these circumstances. I find that the landlord has shown that they have responded to the concerns expressed by the tenant; they issued warnings to neighbours who were playing loud music, they altered a dryer vent and they asked other neighbours to be considerate when smoking. These efforts made by the landlord demonstrate a desire to accommodate the tenant

and the allegation that the landlord has ignored the tenant's concerns were not supported by any evidence.

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 of the Act. The Notice ending tenancy issued on December 6, 2011, is of full force and effect.

The tenant's application to cancel the 1 Month Notice Ending Tenancy for Cause is dismissed. The balance of the tenant's claim is dismissed with 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: December 29, 2011.

Residential Tenancy Branch