



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 November 29, 2011.

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

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled as requested by the tenant.

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 One-Month Notice to End Tenancy for Cause served to the tenant on November 27, 2011, indicated that the landlord was terminating the tenancy because the tenant had significantly interfered with and or unreasonably disturbed other occupants or the landlord. The tenant was disputing that the Notice was warranted.

As the burden of proof was on the landlord to show that the Notice was warranted and that the tenancy should be ended under the Act, the landlord was required to present evidence to support the Notice.

Submitted into evidence by the landlord were communications received from four different parties. Three of these were dated in November 2011 and one dated back to May 2011.

The first communication was a letter of formal complaint from two adjacent tenants sent after November 28, 2011, which stated that problems with the tenant arose shortly after this family moved into their unit. The residents indicated that the "*tenant in question is continually slamming his door against walls at all hours of the day and night*". The

resident went on to state that they felt that residing in the same building puts their safety in jeopardy, "*due to the violent nature of his behavior*".

The tenant denied creating excessive noise by slamming doors and pointed out that the building is not at all sound proof, a fact that was acknowledged by the landlord. The tenant stated that he was also continually exposed to noise from other units.

A second communication to the landlord from the manager of a neighbouring building, dated November 7, 2011, made allegations that the tenant had thrown food and garbage items out his window, sometimes appearing without any clothing on. The letter also alleged that the tenant had shaken a rug out of the window above the manager's head while the lawn was being cut. The manager stated that this conduct had been going on for several years.

The landlord testified that he had taken the above complaint seriously and went over to the building to investigate right away. The landlord acknowledged that he did not personally see the tenant engaging in the behavior. However he took photos of the items allegedly thrown out of the window by the tenant and this was in evidence.

The tenant denied throwing anything out of the window. The tenant testified that he has never appeared in the window naked, and it was likely that he had only been seen without his shirt on. The tenant stated that he had shaken the carpet out the window on one occasion and was not aware that the manager was mowing the lawn in the same proximity at the time. The tenant stated that he had apologized for the incident.

A third complaint letter, dated November 5, 2011, was in evidence from the complex's cleaning lady who stated that in mid October 2011, she could hear loud banging and stomping sounds from the tenant's unit which had happened several times before. The writer also stated that she had met the tenant several times in the past when he appeared to be drunk and made unpleasant remarks to her. The cleaning lady discussed one incident in which she had tried to stop the tenant from damaging the washing machine.

The tenant denied that the banging and rude comments had ever occurred at all. He did, however, acknowledge shaking the washer on one occasion to get it to work.

A fourth letter of concern dated May 19, 2011, came from the resident who apparently lives above the tenant. She described an incident where the tenant had left a note on her door asking her politely to refrain from making noise each day from 3:00 a.m. to 6:30 a.m. and inviting her to contact the tenant to discuss the matter. A copy of this note was in evidence. The resident stated that her early routine required that she arise at 4:30a.m. and that she did not make excessive noise on the dates in question. The

resident stated that , in any case, despite her apologies and explanations, the tenant's reaction to her phone call was hostile and verbally aggressive, and he used offensive language including "*the F bomb*". According to the resident, the tenant made a bizarre accusation that she was intentionally trying to harm him. The resident stated that the tenant's furious reaction caused her to immediately lock her door and she did not communicate with him again.

The tenant acknowledged leaving the note, but stated that the alleged interaction with this resident did not occur as described. The tenant pointed out that he has been in the building for 5 years and has been a good tenant and neighbor.

The landlord gave testimony acknowledging that the tenant has always paid his rent on time and has not otherwise caused any damage. However, he pointed out that there is a lengthy history of the tenant disturbing others and, according to the landlord, verbal warnings have been given to this tenant about his conduct in the past.

The landlord stated that, after he had issued the One Month Notice to End Tenancy for Cause, the tenant then contacted him by telephone and subjected him to a tirade of foul language. The landlord testified that the tenant appeared to be intoxicated and made alarming threats of his intent to harm the landlord.

The tenant denied that he had ever received any cautions from the landlord in the past and refuted the allegation that he had made any threats during the phone call in question.

The tenant stated that he is willing to consider the One Month Notice to End Tenancy for Cause as a warning and would make a firm commitment to keep the peace and not bother anyone with the hope that he could remain living in the complex until the start of summer.

The landlord was not willing to compromise to this extent and requested an Order of possession effective January 31, 2012.

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 Residential Tenancy Guidelines provides information about 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.”

Even disregarding the allegations about the alleged garbage and also minimizing the impact of the allegation that the tenant made “banging noises”, which may or may not be excessive given the age of the building, I must find that the element of aggression reported by the landlord and several witnesses, cannot be ignored. I find that, whatever the reasons behind the tenant’s actions may be, the nature of this behaviour has crossed the threshold into conduct that has significantly interfered with or unreasonably disturbed the landlord and others.

Given the above, I find that the tenant’s Application seeking to cancel the Notice is not supported under the Act 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 Tuesday, January 31, 2012 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: December 19, 2011.

Residential Tenancy Branch