



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This Hearing was scheduled to hear the Tenants' application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued November 21, 2011.

Both parties gave affirmed testimony at the Hearing.

The Landlord testified that the Tenants called him to pick up the Notice of Hearing documents at the rental unit, which he did on December 5, 2011. The Landlord testified that he served the Tenants with copies of his documentary evidence on December 7, 2011. I accept the Landlord's undisputed testimony that he provided the Tenants with his documentary evidence on December 7, 2011. The Tenants did not provide any documentary evidence.

Preliminary Matter

The Tenants were sharing a telephone at the teleconference. It is important to note that from the outset of the Hearing the female Tenant was uncontrollable, interrupting the Landlord twice while he was providing his testimony with respect to service of the documents. She also interrupted the Landlord's witness while he was testifying, arguing with his testimony, calling him a liar and making other inappropriate comments. I cautioned the female Tenant four times that her behavior was not acceptable and that I could not hear the Landlord's or the witness's testimony over her interruptions. Each time I cautioned her, I also warned her that she would be excluded from the teleconference if she did not cease interrupting the Landlord and his witness. Each time I gave her warnings, she also interrupted me. Approximately 20 minutes into the Hearing and after the fourth warning, I told her she was being excluded from the Hearing, and invited her co-tenant to participate in the Hearing on both of their behalves. The male Tenant took over control of the telephone at that point.

Dispute Resolution Hearings are subject to the Residential Tenancy Branch Rules of Procedure. This fact is clearly set out in the "General Information" section of the Notice of Dispute Resolution Hearing form. Rule 8.7 of the Rules of Procedure states:

8.7 Interruptions and inappropriate behaviour at the dispute resolution Proceeding

Disrupting the other party's presentation with questions or comments will not be permitted. The Dispute Resolution Officer may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party.

I explained to the male Tenant that the female Tenant was excluded from the call and that I would hear from him only when it came time to give the Tenants' submissions. The Landlord's witness then continued providing his testimony. A few moments after she had been excluded, the female Tenant came back on the line and interrupted the proceedings again. I directed her to give the phone back to the male Tenant and she stated that she could not because he was being sick. The male Tenant did not come back into the Hearing and the Tenants were disconnected at that point. I continued to hear the Landlord's testimony with respect to the reasons he seeks to end the tenancy.

Background and Evidence

The Landlord testified that he had been provided an Order of Possession for unpaid rent in October, 2011, but that the Tenants had paid the outstanding rent and therefore the Landlord reinstated the tenancy. The Landlord stated that he wanted to end the tenancy now because the Tenants were disturbing the other occupants in the building and have caused damage to the rental property. The Landlord stated that other occupants have told him if he does not do something to provide them with quiet enjoyment of their homes, they will move out. The Landlord provided a written statement from another occupant of the rental property in support of his submissions.

The Landlord's witness stated that he is also an occupant in the rental property and is another neighbor to the Tenants. He testified that there have been four recent occasions when the Tenants have had loud drunken parties with doors slamming and noise in the lobby late at night. The female Tenant interrupted the witness at this point, stating that this was a lie. The female Tenant was excluded from the teleconference.

The witness testified that he could not sleep because of the noise. The witness stated that the police attended at the rental property on the following dates because of the Tenants' or their guests' disturbances: September 28; October 20; November 17; and December 4, 2011. The witness testified that at 1:00 a.m., December 4, 2011, the female Tenant assaulted him before the police arrived by grabbing his face by both

hands. The female Tenant came back on the line and interrupted the witness, stating that he was a liar, that he was much bigger than she was and therefore she could not have assaulted him. The female Tenant stated that she was just trying to “give him a hug”.

The female Tenant was excluded again and the male Tenant did not return to the teleconference. I disconnected the Tenants’ line at this point.

Analysis

When a tenant seeks to cancel a Notice to End Tenancy, the onus is on the landlord to provide sufficient evidence on the civil standard, the balance of probabilities, that the tenancy should end for the reason(s) alleged on the Notice. The Notice to End Tenancy, a copy of which was provided by the Landlord, indicates that one of the reasons the Landlord seeks to end the tenancy is because the Tenants, or a person permitted on the property by the Tenants, have significantly interfered with or unreasonably disturbed another occupant or the Landlord.

I find on the balance of probabilities that the Tenants and their guests have significantly interfered with the Landlord’s witness’s sleep on four occasions. I accept the witness’s testimony that the police were called four times within 4 months to break up the Tenants’ loud parties at the rental unit.

The last incident occurred after the Notice to End Tenancy was issued and served, which indicates that the Tenants did not correct their behavior after being provided with the Notice.

I do not find the female Tenant’s explanation for touching the witness’s face on December 4, 2011, to be credible. The female Tenant, by her unruly and rude behavior at the Hearing, has shown that she has difficulty controlling her emotions and language.

Based on the oral testimony, documentary evidence, the Tenants’ behavior at the Hearing and the reasons noted above, I find that the Tenants have significantly interfered with other occupants on several occasions and that the Landlord’s Notice is a valid notice. The Landlords have a responsibility to other occupants of the rental property under Section 28 of the Act to provide them with freedom from unreasonable disturbance. I dismiss the Tenants’ application to cancel the Notice to End Tenancy.

The Landlord asked to end the tenancy during the course of the Hearing. Section 55 of the Act provides that I must provide the Landlord with an Order of Possession if I dismiss the Tenants’ application and the Landlord makes an oral request at the Hearing.

Based on the testimony of the parties, I am satisfied that the Tenants received the 1 Month Notice to End Tenancy on November 21, 2011. I find that the effective date of the end of the tenancy is December 31, 2011 and I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., December 31, 2011.**

Conclusion

The Tenants' application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., December 31, 2011.** This Order must be served on the Tenants and 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: December 19, 2011.

Residential Tenancy Branch