



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. An Order allowing the Tenant more time to make an application to cancel the Notice to End Tenancy – Section 66;
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing, the Landlord stated that the Tenant’s application contains the wrong dispute address as it lists the Landlord’s address and requests an amendment. The Tenant confirms that this address was put in the application in error. Accordingly, the application is amended to place the Tenant’s address as the dispute address in the application.

Issue(s) to be Decided

Is the Tenant entitled to more time to make the application to cancel the Notice to End Tenancy?

Is the Notice to End Tenancy valid?

Background and Evidence

The tenancy on a unit in a duplex began approximately five years ago. The Tenant's neighbours in the other duplex unit are family members of the Landlord. In March 2010 the Tenant complained of smoke coming into her unit from the next door unit. The Landlord states that the complaint was investigated but no source of smoke could be identified and the Landlord informed the Tenant that his family next door did not smoke. No further complaints were made by the Tenant until January 30, 2012. From that date and throughout February 2012, the Landlord states that the Tenant became increasingly abusive towards the tenants next door by making obscene gestures and comments impugning their character. During this period, the Landlord states that the Tenant continually complained about smoke from the next door tenants and that the Landlord did everything possible to investigate and assure the Tenant that no smoke was coming from the next door unit. The Landlord states that the family members living next door to the Tenant are professionals with a young child and are greatly offended by the comments and gestures made by the Tenant. The Landlord states that the Tenant's harassment made the next door tenants feel threatened and on March 1, 2012, the Landlord served the Tenant by registered mail with a Notice to End Tenancy for Cause (the "Notice").

There is no dispute that the Notice lists the following cause: The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The effective date of the Notice is April 30, 2012.

The Landlord states that despite having served this Notice, the Tenant continued with the harassment and on March 9, 2012, following the Tenant again making obscene comments to the next door tenant, the Landlord called the police. The Landlord states that the Tenant has otherwise been a good Tenant and in recognition of this the Landlord provided the Tenant with an extra month on the Notice and also contacted the Tenant's daughter to ensure that the Tenant had a home to move to upon vacating the unit..

The Tenant does not dispute making an obscene gesture towards the next door tenants and states that the Landlord's evidence is greatly embellished. The Tenant states that the Landlord is carrying out a family conspiracy and that there are drugs and smoking going on in the next door unit. The Tenant states that the police advised her not to shout at her neighbours.

The Landlord requests an Order of Possession should the Notice be found to be valid.

Analysis

As the Notice was received by the Tenant by March 5, 2012, I find that the Tenant filed the application to cancel the Notice within the required time period. Accordingly, I dismiss this part of the Tenant's application.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Accepting the evidence of the Landlord, and given the comments and gestures made by the Tenant, I find that the Landlord has substantiated that the Tenant unreasonably disturbed the next door tenants. Accordingly, I find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. As the Tenant has been unsuccessful, I decline to award recovery of the filing fee. As the Landlord requested an order of possession at the Hearing, I find that the Landlord is entitled to an Order of Possession effective on or before 1:00 p.m. April 30, 2012.

Conclusion

I grant the Landlord an Order of Possession effective 1:00 p.m. April 30, 2012. The Tenant must be served with this **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 29, 2012.

Residential Tenancy Branch