



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, RP, PSF

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel a Notice to End Tenancy for cause, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and for an Order for the landlord to provide services or facilities required by law.

The tenant and a Law Student representing the tenant and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find the tenant has applied for a Monetary Order for money owed or compensation for damage or loss, for an Order for the landlord to comply with the *Act*, for an Order for the landlord to make repairs and for an Order for the

landlord to provide services or facilities. As these sections of the tenants applications are unrelated to the main section which is to cancel the One Month Notice I dismiss these sections of the tenants claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this month to month tenancy started on November 01, 2006. The tenant pays a subsidized rent for this unit of \$320.00 per month and rent is due on the first day of each month.

The landlord testifies that the tenant was served with a One month Notice to End Tenancy in person on July 16, 2012. This Notice provides the following reason to end the tenancy:

The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testifies that the tenant has continually disturbed some of the other tenants living in the building. The tenant was working as a volunteer in the building and would take it upon herself to approach other tenants with complaints. This volunteer relationship ended but the tenant continued to complain about other tenants. Some of these complaints were legitimate and the landlord took the necessary action against those tenants however some of the complaints were not legitimate. The tenant wanted the landlord to change the rules of the building which the landlord was not prepared to do, the landlord testifies that the tenant made complaints to the City of Vancouver and an inspector came to inspect the building and that inspector had no concerns about the building. The tenant also complained to the fire service about fire hazards and the fire officer came and inspected the building and had no concerns. The landlord testifies that

the tenant also complained to the dog control office and they visited the building and addressed some concerns with dogs off their lease and dogs urinating in the building. The landlord testifies that she has e-mailed the tenant asking the tenant to stop taking on the landlords responsibilities.

The landlord testifies that the tenant has complained about other tenants and their children making excessive noise but when the landlord investigated this complaint it was not supported by other tenants in the building. The landlord testifies that they have received numerous complaints from other tenants concerning the harassment from this tenant as this tenant appears to target certain tenants and approach them about all manner of complaints including noise, garbage, Bar-be-que, and dogs.

The landlord testifies that the tenant was given a warning by e-mail from the landlord to desist this behaviour of harassment and intimidation towards other tenants as the other tenants find it unwelcome and intimidating. The landlord testifies that she has a responsibility to protect all tenants' rights to quiet enjoyment of their rental units and this right has been violated by this tenant. The e-mail was sent to the tenant on June 11, 2012 and since that time the landlord testifies the tenant has continued to harass other tenants by taking photographs of their personal property and personal space. The landlord has provided a petition from 16 other tenants asking the landlord to deal with this tenant due to the disturbances and harassment shown towards other tenants.

The landlord testifies that since the tenant was sent the warning e-mail to stop this harassment on June 11, 2012 the landlord has continued to receive complaint letters against this tenant from other tenants. On July 16, 2012 the tenant was seen taking photographs of another tenant's private patio and yard and would have had to enter the other tenant's private space to take these pictures. On July 16 the landlord testifies she received another complaint from a second tenant concerning trespassing, threats and violent behaviour from this tenant.

The landlord requests that the One Month Notice to End Tenancy is upheld and requests an Order of Possession for the effective date of the Notice.

The landlord calls her first witness. This witness KP is another tenant in the building. This witness testifies that she has endured constants harassment form this tenant (CL). The witness testifies that CL comes to her unit daily to inspect if the witness has left any garbage outside and the witness states she then gets daily phone calls from the landlord if she has left anything outside her door ready to go to the dumpsters. This witness testifies she moved to a new unit downstairs and the landlord advised the witness to put any garbage out on her patio. The witness testifies that CL has now started taking photographs of the witness's patio and the bagged items she had stored there to go to the Big Brother group. The witness testifies that she asked CL to leave and was told by CL that she would not leave as it was not the witness's property.

The witness testifies that CL has come out and yelled at her and her children when they have been waiting for an elevator and there have been instances when CL has yelled at the witness's children and their friends when they are playing in their front yard. This has been witnessed by a guest of the witness and by the witness's mother who were vesting. The witness states she feels targeted by the constant harassment.

The tenants law student cross examines the witness and asks the witness when the tenants took the photographs. The witness replies she is not sure but some were taken about two weeks ago.

The landlord calls her second witness (CL). This witness is also a tenant living in the building. This witness testifies that the tenant has been really bad towards her and bothers her whenever she opens her door. The witness testifies that the tenant will come out and stare at her and then go in and slam her door. The witness testifies that on one occasion the tenant threw a banana at the witness's door and has put garbage on top of the witness's car. The witness testifies that the tenant has called her a pig and comes up close to her kitchen window. The witness testifies the tenant is always

complaining to the landlord about her. The witness testifies that she has recently had to call the police concerning this tenant as she no longer feels safe when the tenant comes close to the witnesses unit. The police spoke to the tenant and told the tenant she was not to come near the witnesses unit.

The tenants law student cross examines this witness and asks why the witness keeps a shopping cart outside her door. The witness replies that she uses the cart when she goes shopping.

The landlord calls her third witness (SD). This witness is also a tenant in the building. This witness testifies that the tenant is constantly ranting and raving and targets some of the other tenants. On one occasion a few years ago the witness was in her unit with her door ajar and the witness had a home care nurse with her to discuss the witness's medication. The witness testifies the tenant came barging into the witnesses unit and started commenting on the witness's medication. The witness states the tenant had obviously been listening and the witness states she yelled at the tenant to get out of her unit. On another occasion about six months ago the tenant allowed a friend of the witness to climb from the tenants balcony to the witnesses balcony as the witness had lost her keys and needed to gain access to her unit,. The witness testifies that the tenant then complained to the landlord that the witness had someone living with her. The witness testifies that this person was just a friend assisting the witness and by making this false allegation the tenant could have jeopardized the witness's tenancy.

The witness testifies that the tenant has continually complained about the witness's garbage she places on her mobility scooter to take down with her when she goes out; the witness testifies that she resents the feeling of having her security threatened by the harassment of this tenant. The witness testifies she has heard the tenant on her phone in the hallway making compliant calls and naming other tenants and the witness states she has heard the tenant threatening to get the building shut down.

The tenants law student cross examines the witness and asks the witness when the tenant entered her unit and when the witnesses friend had to use the tenants balcony. The witnesses replies the incident that occurred when the tenant entered her unit was about two years ago and the other incident was about five or six months ago.

The tenants law student states that the landlord has not shown how the tenant has breached a material term of a tenancy agreement that was not corrected in a reasonable time after written notice to do so. The law student states the landlord gave the tenant written notice on June 11, 2012 in which the landlord noted that any further reports of harassment, intimidation or abusive behaviour against other tenants will not be tolerated and must stop immediately. The tenant's law student states that since that time the other complaints that have come in against the tenant are concerning the tenant taking photographs and are not of the same complaints. The tenant's law student states that the witnesses' testimony was concerning incidents that happened before the landlords warning letter. The tenant now does not approach the other tenants but takes her complaints directly to the landlord. The tenant was just taking pictures to provide evidence that the landlord is not maintaining the building and since the warning letter the photos have only been taken from the common areas.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. While I am satisfied that this tenant has disturbed other tenants by prying on their private lives and making continues complaints to the landlord about the other tenants some of which were legitimate and some of which were unproven. The fact remains that the landlord gave one reason on the One Month Notice to End Tenancy and that reason is the only reason dealt with at the hearing today.

The landlord therefore has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the

landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord argues that the tenant's actions of intimidation and harassment have continued after the warning e-mail was sent to the tenant asking the tenant to stop harassment, intimidation or abusive behaviour against other tenants. The tenant testifies that she has stopped all behaviour towards other tenants since receiving this e-mail from the landlord. The tenant argues that she now directs her complaints about other tenants to the landlord instead of directly to those tenants.

I am not wholly satisfied that the tenants actions since the warning letter was given on June 11, 2012 would constitute a failure to comply with the landlords warning letter as the tenants photographs taken since that time are not taken while entering a private area belonging to another tenant and there is no evidence that the tenant has continued to harass other tenants.

Consequently, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I strongly caution the tenant that any further action on her part against any other tenant or the landlord could result in another One Month Notice being issued against her concerning any significant interference or unreasonable disturbances against another occupant or the landlord.

I also strongly suggest the tenant cease and desist taking any photographs of any tenants' property or rental unit which could be construed as harassment. The tenant must be respectful of other tenant's right to quiet enjoyment and the landlord has a right to operate the building within the rules and regulations that govern the building without any interference from the tenant

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated July 16, 2012 is cancelled and the tenancy will continue.

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: August 10, 2012.

Residential Tenancy Branch