



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, MNSD, LRE and FF
CNC

Introduction

This hearing was convened on the tenant's application to have set aside a one-month Notice to End Tenancy for cause dated August 9, 2012 and setting an end of tenancy date of September 30, 2012.

The tenant also sought a monetary award for loss or damage under the legislation or rental agreement, return of her security deposit, an order restricting the landlord's right to enter the rental unit and recovery of the filing fee for this proceeding.

Rule of Procedure 2.3 provides that:

If, in the course of the 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.

On examining the evidence before me, it is apparent that the Notice to End Tenancy is the paramount issue in this dispute and the present hearing dealt only with that issue. If the tenant's other claims are not resolved through a decision on the Notice to End Tenancy, the tenant will have leave to reapply. However, at present, I note that the request for return of the security deposit is premature as the tenancy has not ended and I see no justification in ending the landlords' right to enter rental unit within the parameters set by legislation.

At the commencement of the hearing, the landlords offered to negotiate a mutual agreement to end the tenancy with the tenant and said they would give consideration to a time that would work for the tenant. The tenant stated that she did not have the \$3,000 she believed it would cost her to move and declined the offer to negotiate a mutual agreement.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld?

Background and Evidence

This tenancy began on June 1, 2012 in a basement suite, the upper portion of which is occupied by the landlords.

Rent was \$875 per month and was raised to \$900 per month after the tenant's adult daughter moved in early in on June 3, 2012 without prior consent of the landlords.

During the hearing, the landlords gave evidence that the tenant had advised them that her daughter suffered from bi-polar disorder.

About mid-July 2012, the tenant advised the landlords that her boyfriend would be using the tenant's address for mail as he prepared to move for a new job out of province. The landlords noticed that the boyfriend was frequently around the rental unit and they were subsequently advised by the tenant that he had moved in. The tenant offered to pay an extra \$100 per month if her boyfriend could stay temporarily, and the landlords agreed on the understanding that he would be there for a limited duration and eventually settled on an increase of \$75.

During the hearing, the tenants gave evidence that during that period they had overheard a number of loud arguments between the tenant's daughter and boyfriend when the tenant was at work.

Matters came to a head on the evening of August 2, 2012 when a very alarming argument took place in the rental unit accompanied by screaming and a series of by loud banging to a degree that the female landlord called the police. The landlord left work to assist his family and arrived to find police removing the boyfriend from the rental unit and the police located the daughter up the street. The tenant states that they left of their own accord.

The landlords met with the tenant the following day who gave assurance that the daughter and boyfriend would not be back and who agreed to vacate the rental unit at the end of August and to permit potential tenants to view the suite in the interim.

A few days later, the daughter moved back into the suite and shortly after the tenant recanted the verbal agreement to end the tenancy and refused any further showings of the rental unit.

The landlords gave evidence that in the days following, they and neighbours had noted the boyfriend sleeping in the tenant's car parked up the street and had reason to believe he was entering the rental unit. In fact, they saw him enter the rental unit with the tenant late in the evening of September 2, 2012.

The landlords stated that the fighting had terrified their children who were now too frightened to use their portion of the basement that adjoins the rental unit and, with the daughter and boyfriend still frequenting the area and given the volatile relationship between the two, they feared a repeat of the incident of August 2, 2012 or worse.

The tenant expressed concern that her privacy had been breached because the landlords made reference to her having removed her hearing aids during the argument, although she had offered that as explanation as to why she hadn't found the disturbance as severe as they had. She also felt that because the landlord is a firefighter who was recognized by an attending police officer, he might be privy to information he might not otherwise have had.

Analysis

Section 47 of the *Act* empowers a landlord to issue a one-month Notice to End Tenancy for cause. I find no doubt that the tenant breached section 47(1) among others, provides for a Notice to End Tenancy under circumstances in which:

- d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

I find that the Notice to End Tenancy of August 9, 2012 was lawful and valid and I declined to set it aside.

The landlords had requested an Order of Possession under section 55(1) of *Act*, which compels the issuance of the Order on the landlords' oral request if a tenant's application to set aside is dismissed and/or the Notice to End Tenancy is upheld.

Accordingly, I find that the landlords are entitled to an Order of Possession to take effect at 1 p.m. on September 30, 2012, the end of tenancy date set by the Notice to End Tenancy.

Conclusion

The application is dismissed with leave to reapply only on matters other than the Notice to End Tenancy and the Notice to End Tenancy of August 9, 2012 is upheld.

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, for service on the tenant and to take effect at 1 p.m. on September 30, 2012.

The landlords remain at liberty to make application or any damage or losses as may be ascertained at the conclusion of the tenancy.

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: September 11, 2012.

Residential Tenancy Branch