



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was scheduled to hear a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and Orders for compliance. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is it necessary to issue orders for compliance to the landlord?

Background and Evidence

This month-to-month tenancy commenced in April 2011. The tenant is required to pay rent of \$650.00 on the 1st day of every month. The tenant resides in the one bedroom unit with her 19 year old son. On occasion the tenant has also permitted other occupants or roommates to reside in the rental unit with her and her son.

The residential property is described as a two-storey 8 unit building with entry doors that open to a common breezeway, similar to a motel. There are two stairways leading to/from the second floor.

On August 30, 2012 the tenant received a 1 Month Notice to End Tenancy for Cause (the Notice) with an effective date of September 30, 2012. The tenant filed to dispute the Notice within the time limit required under the Act.

The Notice indicates six reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord

The property manager submitted that other tenants have been complaining about the noise associated to the frequency of guests coming and going from the tenant's unit. The property manager stated that the complainants have asked not to be identified for fear of retribution.

In response to the complaints the two property managers observed the activity at the property on two occasions and noticed that visitors come to the tenant's unit approximately every 15 minutes or so and then leave after only 3 or 4 minutes. Activity is greatest in the days following issuance of Income Assistance payments.

The property manager also submitted that he was informed by the police that the tenant's unit has been under surveillance with respect to stolen property.

The property manager submitted that even after the 1 Month Notice was issued further complaints about the noise and activity in the tenant's unit were received from other tenants on September 1 and 14th. Three complaints were received on September 14, 2012. The property managers monitored the activity at the property again October 3, 2012 and observed similar activity as before: frequent short term guests. Further complaints were received from other tenants again on October 6 and 7, 2012.

The landlord stated that the tenant has been verbally warned numerous times to keep the noise down and the tenant would comply for a short period of time and then the disturbing behaviour would re-surface.

The tenant submitted that she is a quiet woman who does not do drugs and rarely leaves her rental unit. The tenant acknowledged she has guests visit her in her unit and when the property manager asks her to do something she is compliant with his

requests. The tenant also submitted the property managers are mistaken and that many visitors to the property are there to visit her neighbour.

The tenant indicated that she has problems with the neighbour and the activity of the neighbour's visitors; however, the tenant also acknowledged that she and several of her guests and the neighbour's guests often go back and forth between her unit and her neighbour's unit.

The property manager agreed that he observed guests going back and forth between the tenant's unit and the neighbouring unit. At other times guests were seen attending one unit or the other but not both.

The tenant acknowledged that one of her former roommates may have had been involved with stolen property and that when she learned of this she got rid of him as a roommate.

The tenant alleged that the landlord is "picking on her" as there is often partying, fighting and vandalism taking place elsewhere on the property and other tenants do not get evicted. The landlord claimed that the tenant's neighbour has given an eviction notice and that tenancy is ending.

I asked the tenant to speculate as to why a landlord would want to evict her given her position she is a quiet and compliant tenant. The tenant raised a previous issue with paying the rent late but that the landlord accepted the late payment and would continue with the tenancy, in writing. The landlord acknowledged acceptance of the late payment of rent and agreed to continue with the tenancy in writing but that was a completely separate issue involving rent.

The tenant also stated the property manager's harasses and threatens to call the police on her. I asked the tenant what preceded the property manager's threats to call the police. The tenant was hesitant in her response but eventually explained that she had allowed another tenant to cook in her unit when that person's hydro had been disconnected. The tenant claims that when the property manager learned of this the landlord threatened to call the police.

The landlord clarified that the landlord was angry that extension cords were running between units to provide power to the other tenant who had her hydro disconnected by BC Hydro.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove that the tenancy should end for the reason(s) indicated on the Notice. Where a Notice has several reasons indicated it is only necessary to prove one of the reasons in order to uphold the Notice.

The burden of proof is based upon the balance of probabilities. Such a burden is not the same as the criminal standard which is beyond a reasonable doubt. Rather, the landlord has to show the landlord's version of events is "more likely" than the tenant's version.

Where opposing verbal testimony is the only evidence submitted the credibility of the parties becomes paramount to making a decision as to which version is more likely. With respect to credibility, the courts have found the following:

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

During the hearing I found the landlord's submissions to be detailed and consistent. I found the landlord's responses to my enquiries to be responsive and reasonable.

In contrast, I found the tenant's submissions to be inconsistent, unresponsive and vague on a number of occasions. For instance:

1. The tenant submitted that she has had problems with the activity going on at her neighbour's unit; yet, she also submitted that she frequently visits his unit, as do her guests, and that the neighbour's guests visit her unit. I find these submissions inconsistent and an attempt to deflect the disturbing behaviour to the neighbour since the neighbour's tenancy is already set to end.

2. The tenant submitted that the landlord has not moved to evict other tenants for disturbing behaviour that statement is simply untrue. Yet, on September 22, 2012 the tenant herself appeared as a witness for a hearing scheduled to deal with the eviction of the tenant's neighbour.
3. The tenant did not deny the landlord's allegations that her guests come in frequent succession and stay for only a few minutes. Rather, the tenant's response to this was that she is being singled out by the landlord and that other disturbing behaviour takes place on the property.

As I find the landlord to be more credible than the tenant I accept, on the balance of probabilities, the version of events as described by the landlord. Therefore, I accept that the landlord has received numerous noise complaints from other tenants associated to the frequent short term visitors to the tenant's unit.

Since the landlord has the obligation to protect the right to quiet enjoyment of all tenants, I find the landlord's decision to issue this Notice to be reasonable given previous verbal warnings have not resulted in on-going compliance. Therefore, I upheld the Notice to End Tenancy and dismiss the tenant's application.

As the effective date on the Notice to End Tenancy has already passed the tenant is required to return vacant possession of the rental unit to the landlord forthwith.

Conclusion

The Notice to End Tenancy issued August 30, 2012 has been upheld. The tenancy has ended and the tenant must return vacant possession of the unit to the landlord forthwith.

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: October 10, 2012.

Residential Tenancy Branch