



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, AAT and FF

Introduction

This hearing was convened on the tenant's application to have set aside a one-month Notice to End Tenancy for cause dated September 30, 2012 and served on October 1, 2012. The notice set an end of tenancy date of November 1, 2012 which is amended automatically by section 53 of the *Act* to November 30, 2012 to conform with the requirement that the notice take effect at the end of the next rental period following service.

The tenant also seeks a Orders for landlord compliance with the legislation, assurance of provision of access to the rental unit, provision of services or facilities and recovery of the filing fee for his 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.

Given the number of claims submitted by the tenant in the present application, it became apparent as the hearing progressed that it would be necessary to limit the present hearing to the Notice to End Tenancy as the paramount issue in dispute.

Similarly, I have not canvassed late evidence submitted by the tenant in the form of written statements from his former co-occupant or photographic evidence of a fridge removal as were submitted late and are more pertinent to the issues severed from the present hearing.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began in February 1, 2012 in a cabin on a bed and breakfast business in which the landlords provide housing in conjunction with various housing assistance groups and community churches.

Rent was originally \$600 per month, but was raised to \$750 after the tenant had been joined by a co-occupant who has since left, and they were provided with a larger unit. The landlord stated that the co-occupancy had been cause for some concern when she had heard loud arguments, and eventually the co-tenant asked for the landlord's assistance when she decided to move.

The tenant and landlord came into conflict in early August 2012 when the landlord advised the tenant that the new unit had been rented at \$840 per month as she had put a new full sized refrigerator in it. The landlord stated that the tenant angered when she asked him to pay the full rate or agree to exchange the full sized refrigerator for a half-sized unit. She said the tenant later agreed to the exchange of fridges, but denied having done so when she arrived with help to complete the switch.

The landlord said the tenant first stated that he would prefer to move on the fridge issue, he and the landlord shook hands on the verbal agreement to end the tenancy and the landlord confirmed the agreement by letter of August 31, 2012.

The landlord stated that she had become reluctant to converse with the tenant because of his anger, and he tenant subsequently recanted on his promise to vacate. The landlord subsequently delivered the Notice to End Tenancy on the approved form on October 1, 2012 resulting in the tenant's present application.

The notice to end cited significant interference or unreasonable disturbance of the landlord and other tenants.

The landlord gave evidence that much of the cause for ending the tenancy resulted from the tenant frequently being under the influence of alcohol and that she had seen him consuming beer as early as 8:30 a.m.

She said the previous tenant in the unit now occupied by the landlord had complained of the subject tenant making inappropriate comments to her, of treating his co-occupant badly and of his excessive use of alcohol.

The inappropriate comments were described more as unwelcomed romantic overtures rather than vulgarities, and the landlord stated that the tenant had made similar unwelcome comment to her.

Another neighbour gave the landlord permission to give evidence of her concerns, despite her fear of retaliation. She had complained of the subject tenant coming into her yard in an intoxicated state and had needed to block the view of her yard with a blue tarp to increase her privacy. The subject tenant said he had discussed the matter with her and she told him the report was grossly exaggerated in the landlord's recounting.

The landlord stated that the tenant had smoked in the first unit despite her repeated request that he not do so in the non-smoking unit. She said that she had not seen him smoke in the second unit, but that there was an odour of tobacco in the unit which she said may have been residual from the tenant smoking elsewhere.

The landlord said that she had felt some concern when the tenant, beer in hand, appeared to be approaching her grandchild and parent who were picking blueberries, but she concurred that the tenant immediately complied with her request that he not make contact with them.

The landlord stated that she preferred to end the tenancy because the tenant is so quick to anger causing her to be fearful of him, he continued to smoke in the first unit despite repeated requests to do so, denied his original agreements with respect to the fridge and ending the tenancy, and had been the source of complaints from other tenants including those of the domestic disturbances.

Analysis

Section 47(1)(d)(i) permits a landlord to issue a one-month Notice to End Tenancy in circumstances in which a tenant's conduct causes significant interference with or unreasonable disturbance of another occupant or the landlord of the residential property.

I accept the evidence of the landlord that she feels intimidated by the tenant's frequent intoxication and repeated angry responses to a degree that constitutes unreasonable disturbance of the landlord and other tenants.

Therefore, on the balance of probabilities, I found the Notice to End Tenancy to be lawful and valid and I declined to set it aside.

On the basis of that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's oral request when a tenant's application to set aside is dismissed and the notice is upheld.

Accordingly, I find that the landlord is entitled to an Order of Possession. With the previously noted amendment to the end date to conform to service requirements, I find that the tenancy ends on November 30, 2012.

Conclusion

The Notice to End Tenancy of September 30, 2012 (served on October 1, 2012) is upheld and the tenant's application is dismissed without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect no later than 1 p.m. on November 30, 2012.

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 25, 2012.

Residential Tenancy Branch