



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated September 27, 2012. At the outset of the hearing, the Parties confirmed that they were each served with the others' documentary evidence. All of the documentary evidence has been reviewed by me. The Parties were also given an opportunity at the hearing to give their evidence orally, to have witnesses attend and to ask questions of the other party. All testimony was taken under oath or affirmation.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on November 1, 2005. Market rent is \$740.00 per month. When the Tenant is eligible for a subsidy, her rent is \$204.00 per month. The Parties agree that on September 27, 2012, the Tenant was served in person with a One Month Notice to End Tenancy for Cause. The grounds listed on the One Month Notice were that,

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord's agent claimed that on July 5, 2011 she received a verbal complaint from a neighbour of the Tenant's that marijuana smoke was coming from the Tenant's patio and entering through her open window. The Landlord's agent said gave the Tenant a verbal warning about this incident. The Tenant denied that she or any guest smoked marijuana on the rental property and argued that it could have instead been any number of other tenants of the rental property who regularly smoked marijuana on their patios.

The Landlord's agent also claimed that on February 8, 2012 a guest of the Tenant's got into a verbal altercation with her neighbour (the Landlord's witness, C.J.) and threw a

patio chair through a window of her residence. The Landlord said the RCMP was called and the Tenant was given a warning letter that she could be evicted if a similar event occurred. The Tenant claimed that C.J. was at her residence for a Super Bowl party and that she made a number of racial slurs to her guest who became upset and chased her out of the rental unit and into her own residence. The Tenant said she has not invited this guest back to her residence since this incident.

The Landlord's witness, C.J., also gave evidence that she was a former neighbour of the Tenant's from October 2006 until June 2012. C.J. said that during this period, she contacted the RCMP approximately five times due to noise disturbances caused by the Tenant or her guests. C.J. said she believes the Tenant is a "loose cannon" in that she would bang loudly on common walls, swear and on one occasion threatened to have someone "kick her a**." C.J. said she also overheard loud fights between the Tenant and her boyfriend on a number of occasions and observed after them that the Tenant left bite marks, scratches and bruises on her boyfriend.

The Tenant denied the accusations of C.J. and argued that she was on good terms with C.J. during most of her tenancy. The Tenant also argued that C.J. never made complaints to the Landlord about noise because she never received a warning about them. The Tenant also argued that C.J.'s evidence was not reliable because she was on many prescription medications and had a drinking problem which impaired her ability to see and to recall events. The Tenant also relied on a witness statement of her father who deposed that C.J. had mood swings from depression as well as a drinking problem and claimed that she bullied the Tenant during her tenancy.

The Landlord's agent further claimed that on September 22, 2012, she received a written complaint from S.H., who is one of the Tenant's current neighbours. S.H. claimed she moved into the rental property on August 1, 2012 and was initially on good terms with the Tenant. S.H. said however that she endured noise and disturbances from "excessive partying" at the Tenant's rental unit. S.H. said the noise often kept her child awake late at night and she was also disturbed by the smell of marijuana coming from the Tenant's patio where she sat with her guests smoking it. S.H. said she did not previously report these incidences to the Landlord because she wanted to try to stay on friendly terms with the Tenant.

S.H. said at 5:30 a.m. on September 22, 2012 however, she was watching television with the volume turned down low when she also heard the Tenant banging on their common basement wall. S.H. said shortly after she then heard a loud banging on a window so her spouse went to the door and as she followed she overheard the Tenant yelling and swearing at him to turn the television down. S.H. said this explosive conduct of the Tenant frightened her so she reported it to the Landlord. S.H. said she now fears for her safety because she believes she is being bullied and harassed by the Tenant.

The Tenant argued that the Landlord withheld all of this information from her when she was served with the One Month Notice to End Tenancy for Cause on September 27,

2012. The Landlord's agent admitted that she only served the Tenant with the witness statements in her evidence package five days prior to the hearing of this matter. The Tenant relied on character references from friends and other occupants of the rental property to support her position.

Analysis

In this matter, the Landlord 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's agent also sought to rely on alleged breaches of material terms such as having an unauthorized pet, unauthorized additional occupants and repeated late payment of rent, however there are separate and distinct boxes on the One Month Notice that refer to these grounds which were not selected by the Landlord and therefore I find that they are not relevant in this matter.

The Landlord relied on the evidence of a current and previous tenant that they had been significantly interfered with or unreasonably disturbed by the Tenant. In particular, the Landlord's agent argued that the Tenant had parties during which she and her guests made an unreasonable amount of noise late at night and smoked marijuana. The Landlord's agent also argued that at least one guest of the Tenant's caused property damage and threatened another occupant of the rental property. The Landlord's agent further argued that the Tenant is emotionally volatile and has had loud and violent arguments with her boyfriend and showed the same volatility when she approached her neighbor, S.H., on September 22, 2012 about the noise from her television.

I find on a balance of probabilities that the Tenant has unreasonably disturbed other occupants of the rental property. In particular, I find that the evidence of the Landlord's witnesses was consistent that the Tenant has had frequent parties during which there has been loud noise and likely marijuana use. The Tenant did not deny that her former neighbor, C.J., called the RCMP on some of these occasions but instead argued that she was bullying her. The Tenant did not deny that on February 8, 2012 during a party, that one of her guests smashed a window of C.J.'s residence. The Tenant's current neighbor, S.H., admitted that she did not initially make complaints about the noise from these parties in an attempt to maintain a good relationship with the Tenant.

Both witnesses also gave evidence about the Tenant's "explosive behavior." The Landlord's witness, S.H., claimed that she could overhear violent arguments between the Tenant and her boyfriend. S.H. said she experienced the Tenant's explosive anger personally when the Tenant confronted her angrily on the morning of September 22, 2012 about her television. S.H. claimed that she now fears retaliation from the Tenant. The witness, C.J., also gave evidence that she overheard violent arguments between

the Tenant and her boyfriend during and up to the end of her tenancy and called the RCMP on some of these occasions rather than report it to the Landlord. C.J. said on occasion she saw a bite mark and scratches on the Tenant's boyfriend.

In summary, while the Tenant disputed many of the allegations made by the Landlord's witnesses, I find that the witnesses corroborated each other and for that reason, I find their evidence to be more reliable than the Tenant's. The Tenant provided no corroborating evidence other than character references from people who had no direct knowledge of the events alleged. The Tenant provided a written statement made on behalf of her father by someone else but it was limited to allegations about C.J.'s character rather than any knowledge of the events in question.

The Tenant also argued that the Landlord did not advise her of the reasons for issuing the One Month Notice until approximately a month later when she received the Landlord's evidence package. The Landlord's agent did not give any reason for withholding from the Tenant why she was being served with the One Month Notice and I find that there is no evidence that the Tenant asked the Landlord to provide her with the reasons for issuing the One Month Notice.

The principles of natural justice require that a Party know the case against them and have a reasonable opportunity to respond. The Tenant did not request an adjournment to give her more time to respond to the Landlord's witness statements but instead filed further responding evidence after receiving those statements. The Tenant was also given an opportunity at the hearing to call witnesses to give corroborating oral evidence but chose not to do so. Consequently, I find that the Tenant has not shown that she was prejudiced by receiving the Landlord's witness statements approximately a month after the One Month Notice to End Tenancy for Cause was served on her.

Conclusion

As I have found that there are grounds for the One Month Notice to End Tenancy for Cause dated September 27, 2012, the Tenant's application to cancel it is dismissed without leave to reapply. The Landlord's agent requested and I find pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect at 1:00 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: November 06, 2012.

Residential Tenancy Branch