



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC

Tenant: CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution with the landlord seeking an order of possession and the tenant seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by the landlord, two agents for the landlord, and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 55 of the Act.

Background and Evidence

The landlord provided the following documents as evidence:

- A copy of a tenancy agreement signed by the parties on May 1, 2009 for a month to month tenancy beginning on May 1, 2009 with a monthly rent of \$500.00 due on the 1st of each month with a security deposit of \$250.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on November 27, 2012 with an effective vacancy date of December 31, 2012 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; put the landlord's property at significant risk; 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; and
- A copy of a warning letter dated March 10, 2012 in which the landlord identifies to the tenant the problem of her guests coming to the property late at night and using the buzzer that wakes up other tenants and the fact the tenant has given keys to non-tenants.

The landlord submits the tenant continually allows her friends to visit at all times of the day and night and that when they do they wake other residents in the building by using the building buzzer and the noises in the stairwells. The landlord also submits that some of the people visiting the tenant will press many of the units seeking to gain access to the property.

The landlord provided, in his testimony that he saw a male with a dog enter the building with a key on December 18, 2012 who entered into the tenant's rental unit. This occurred after the tenant had been issued the 1 Month Notice.

The landlord also contends the tenant and/or her friends are leaving syringes in the stairwells and that the tenant is allowing tenants to do drugs on the property including her parking stall.

The tenant submits the landlord has no evidence that she or her guests are conducting any illegal activity. The tenant submits that despite the occasion when the police broke down her door she had done nothing wrong. The tenant testified that the police had entered into her unit because they were in pursuit of someone and they were let to her unit.

The tenant also testified that she has no control of the buzzer and the fact that it is waking up people is more the landlord's responsibility than hers. She also submits that the landlord has provided no evidence that her guests are doing anything more than walking up the stairs to her unit but that they are not causing any disturbances.

The tenant also testified that she has only given her key out to friends 4 times in the 4 years of the tenancy; that she always gets the key back with the exception of one time but that even that key was later returned; and that she has not provided a key to anyone since the landlord's warning letter of March 10, 2012.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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, or
 - ii. Put the landlord's property at significant risk;

- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

While the landlord submits the tenant is “known” to police; that there have been events involving police in the tenants unit; and that there is a police file number for events around December 16, 2012 I accept the tenant’s position that the landlord has provided no evidence that the tenant or her guests have engaged in any illegal activity.

I also accept the tenant’s position that the landlord has provided no evidence or complaints that other residents in the residential property that are being disturbed by anything other than the buzzer noise and the noise of people taking the stairs. I accept that these noises are related to the age and character of the building and therefore something the landlord may address by changing the buzzer system and/or tenants must accept as a result of the age and character.

While I accept the tenant’s assertion that there is nothing in the *Act*, regulation, or tenancy agreement specifically preventing her from giving her keys to her friends to use for convenient access, I find that the obligations imposed by the *Act*, regulation and tenancy agreement include a duty of care. That duty of care includes protection of the residential property and the safety of other occupants in the residential property.

I find that the provision of a key to someone that the landlord has not authorized or to someone who is not a tenant after the landlord has specifically identified to the tenant that if she did so the landlord would consider grounds to end the tenancy would be a sufficient breach her duty of care to warrant ending the tenancy.

Despite the tenant’s testimony that she has only given her key out four times throughout the tenancy, from the landlord’s evidence and testimony one of those times was on December 18, 2012 when the landlord observed a non-tenant male using a key to enter the building and subsequently entered the tenant’s rental unit. The tenant did not dispute the landlord’s observations.

As a result, I find the landlord had sufficiently warned the tenant that the consequences of giving her key out to any other parties might include ending the tenancy; that the tenant, on at least one occasion, continued to provide keys to parties other than tenants; and therefore put the landlord’s property at significant risk.

Conclusion

For the reasons noted above I find the landlord has established sufficient cause to end the tenancy and I dismiss the tenant's Application in its entirety.

I also find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: January 15, 2013

