



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC LAT FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy, as well as for monetary compensation and an order to allow the tenant to change the locks to the rental unit. The tenant, the landlord and three witnesses for the landlord participated in the teleconference hearing.

At the outset of the hearing, the tenant stated that she had not served the landlord with her last evidence package. I did not admit or consider that evidence. The landlord confirmed that he had received the remainder of the tenant's evidence. The tenant stated that she had only received the landlord's evidence on January 8, 2013, and while she did receive it more than five business days before the hearing, the tenant did not have time to obtain documentary evidence in response to one portion of the landlord's evidence. The landlord agreed to exclude that portion of his evidence, and I admitted the remainder of the landlord's evidence. I have reviewed all admissible testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The tenant wished to amend her application to also dispute a second notice to end tenancy. The landlord stated that the second notice to end tenancy was regarding a separate issue, and the landlord was not prepared to address that notice in this hearing. I therefore did not allow the amendment.

I determined that the issue of the first notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began in September 2012. The rental unit is the upper unit in a house. A second rental unit, on the lower level of the house, is occupied by other tenants under a separate tenancy.

On December 11, 2012, the landlord served the tenant with a notice to end tenancy for cause. The notice indicates that the reasons for ending the tenancy are as follows: (1) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; (2) the tenant has engaged in illegal activity that has, or is likely to (a) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and (b) jeopardize a lawful right or interest of another occupant or the landlord.

Landlord's Evidence

The landlord stated that the tenants living below the tenant have made numerous complaints about the upstairs tenant and her son. The landlord has made efforts to soundproof between the two suites, but the downstairs tenants continue to complain about excessive noise. The tenant's child was stealing other tenants' mail. At the outset of her tenancy, the tenant failed to hook up hydro in her name, and she was stealing the downstairs tenants' hydro. The tenant illegally changed the locks on the suite and did not give the landlord a key. The landlord believes he is about to lose his third downstairs tenants because of the noise and unreasonable behaviour of the upstairs tenant. In the hearing, the landlord orally requested an order of possession.

A witness for the landlord, MW, is one of the current tenants in the downstairs suite. She stated that the upstairs tenant is moving furniture all night, and the upstairs tenant's son is running around all night, until 2 a.m., so MW and her partner cannot sleep. The tenant went into the shared laundry room and threw MW's laundry all over the floor. The tenant shuts off the breaker, located in her unit, so that the downstairs tenants cannot use the dryer. The tenant has made false reports to the police of domestic violence between MW and her partner, and they feel they have to walk on eggshells to avoid problems with the tenant.

A second witness for the landlord, PD, was considering renting the downstairs unit, and the landlord offered PD the opportunity to spend a night in the downstairs unit at the beginning of November 2012. That night, PD heard yelling and screaming and crazy language in a female voice coming from the upstairs unit. PD chose not to rent the downstairs unit because he did not want to expose his child to that environment.

Tenant's Evidence

In regard to the noise complaints, the tenant stated that she has a sleep disorder and she walks around at night, but she has no control over it. The tenant only received one written complaint from the landlord. The current downstairs tenants moved in on December 1, 2012, so it has not been a very long time for them to be disturbed. The tenant has gotten lots of verbal complaints from the downstairs tenants, so the tenant modified her behaviour and informed the downstairs tenants. In regard to the complaint of noise on November 28, 2012, the tenant had to take her son to the hospital. In regard to the complaint of noise on December 8, 2012, those were just the noises of daily living. In response to PD's evidence, the tenant stated that parents sometimes yell at their kids. The tenant believes that the landlord's soundproofing work is not complete.

The tenant denied changing the lock. She acknowledged that her son tampered with the mail, but it was not malicious or intentional. The tenant acknowledged borrowing some power, but it was the landlord's fault because he did not put the hydro in his own name while the unit was vacant.

The tenant stated that she is a decent, polite person, not the kind of person to throw others' laundry on the floor. The tenant provided a written statement from a neighbour to demonstrate the tenant's character.

The tenant acknowledged that she has called the police to report sounds of domestic violence from the downstairs tenants. The tenant hears arguments between the downstairs tenants and she believes that it is her responsibility to report it to the police. The landlord does not want the tenant to call the police because he is about to receive a fine for infractions of the noise bylaws.

Analysis

Upon consideration of the evidence, I find that the notice to end tenancy is valid. I find that the tenant has significantly interfered with or unreasonably disturbed the downstairs tenants on several occasions. The tenant did not provide sufficient evidence to show that she has taken reasonable steps to address any sleep disorder that causes her to create noise at night. The tenant acknowledged that she yells at her son. The tenant did not deny throwing the downstairs tenants' laundry on the floor.

The landlord orally requested an order of possession in the hearing, and I therefore must grant the order of possession. As the notice was served on December 11, 2012, the effective date of the notice automatically corrects to January 31, 2013.

As the tenant's application to cancel the notice to end tenancy was unsuccessful, she is not entitled to recovery of the filing fee for the cost of her application.

Conclusion

The tenant's application to cancel the notice to end tenancy is dismissed. As the tenancy is ending, I also dismiss the portion of the tenant's application requesting an order allowing the tenant to change the locks. The tenant's monetary application is dismissed with leave to reapply.

I grant the landlord an order of possession effective January 31, 2013. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and 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 21, 2013

Residential Tenancy Branch

