



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIDGEVIEW VILLAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, RR, FF

Introduction

This hearing was convened in response to an application filed by the tenant who is seeking:

1. To cancel a Notice to End Tenancy given for cause;
2. A monetary Order for compensation for damage or loss in the sum of \$25,000.00;
3. An Order that the landlord comply with the Act, regulation or Tenancy Agreement;
4. An Order allowing the tenant to reduce rent for repairs, services or facilities; and
5. An Order to recover the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

The parties agree that on February 2, 2013 the tenant received a 1 month Notice to End Tenancy which was posted to her door on that date. The tenant filed her application seeking to dispute that notice On February 12, 2013 which is within the time frame allowed under the Act.

Issue(s) to be Decided

Does the landlord have cause to end this tenancy? Has the tenant met the burden of proving her claims?

Background and Evidence

This tenancy began in April 2009. The rental rate at that time was \$1,040.00 and the tenant paid a security deposit of \$731.50. At some point rent was reduced to \$955.00 per month. The tenant says this was due to the vacancy rate in Fort St. John.

With respect to the landlord's Notice to End Tenancy Cause the landlord has issued the notice on the following grounds:

1. Repeated late payment of rent; and
2. That the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

The landlord says that since the tenant has lived in the rental unit her rent has been on time only eight times. Using the past year as an example, the landlord says the tenant's rent has been late in January, February, April, July, August, September, October and December 2012 and it was late again in January 2013. The landlord says that the tenants seemed to have been allowed to pay their rent at varying times even though the tenancy agreements say the rent is due on the first. The landlord says that since taking over as manager February 2012 she has been working to bring all the tenants into compliance with their tenancy agreements. Her efforts have included informing all tenants that their rent must be paid on time in full and serving 10 day Notice to End Tenancy for those tenants who continue to pay their rent late. The landlord says that 90% of the tenants now pay their rent on time but there were 5 evictions of those who refused to do so.

The landlord says that the practice of this tenant has been to pay her rent in two installments. The landlord says there was only one occasion in which the tenant had permission to pay her rent late and that was in August 2012 when the tenant advised she was facing medical problems. However, the tenant continued to pay her rent late in both September and October. While it was paid on time in November the landlord says that December the tenant came into the rental office to pay a portion of her December rent and stated that she had Christmas shopping to do and would pay the rest later. The landlord warned the tenant that this was not acceptable and followed-up with service a 10 day Notice to End Tenancy for unpaid rent when the tenant did not pay full rent. The landlord says the tenant phoned the corporate head offices and received a reprieve based on an agreement that her rent would never be late again and the 10 day Notice was withdrawn.

However, the landlord says that in January the tenant's rent was late again and she therefore issued a one month Notice to End Tenancy for Cause which is the subject of this hearing.

With respect to the ground of significant interference the landlord says the tenant makes chronic unsubstantiated complaints with respect to any tenants occupying suite 104. The landlord says the previous tenant in suite 104 vacated because this tenant was

using her cellular phone to take pictures of the tenant, her infant daughter, boyfriend and other relatives. Further this tenant complained of noise, slamming doors and stomping. The tenant in 104 complained that this tenant was also stomping around in her suite and vacuuming at “obscene” hours. The landlord testified that she attempted to set up a meeting with the two tenants to discuss the issues with the hope of resolving them but this tenant refused. The other tenant subsequently gave notice and vacated.

New tenants moved into suite 104 and once again the tenant complained of noise, loud music, parties, slamming doors and stomping around. The landlord says she and her building manager, who also lives in the building, have attended when this tenant said noise was coming from suite 104 only to find that there was no noise. On one occasion the building maintenance man was in suite 104 making repairs when this tenant complained that noise was coming from that suite. The maintenance man confirmed that there was no noise save the television set which was on at a normal volume.

The landlord says that rather than receiving complaints about the occupants in 104 from other tenants, the landlord says that she has received several complaints about this tenant making noise in her suite at varying hours. The landlord says she must bring this tenancy to an end for the benefit of the other tenants.

The tenant says that this is untrue. She says that until this application she has never been told that there have been complaints made against her. The tenant has submitted unsworn notes from three tenants in suite 105, 102 and 107 who say they have never heard noise coming from her suite. In addition, the tenant in suite 102 says that the tenants in suite 104 are “out of control” and the tenant in Suite 107 says there are loud arguments and profanity coming from suite 104. The tenant says that despite these issues the landlord is not responding to her complaints. The tenant says that she has called the police and they have attended twice as have the by-law officers. The tenant says she cannot move because the vacancy rate in Ft. St. John is very low, she likes her suite and she feels she should not be forced to leave simply because the landlord will not respond to her complaints.

The tenant says she is seeking compensation from the landlord for their behaviour which she says has been malicious. The tenant says it is malicious and unfair that the landlord gave her no indication that other tenants were complaining about her. The tenant submits that if the landlord would communicate to allow her to “...mitigate if I’m bothering people I could change”.

Further, the tenant says that the landlord never gave her any indication that paying rent in split payments was not allowed. The tenant says she has frequently paid her rent in

part payments and the landlord would always serve a 10 day Notice but simply tell her to ignore the Notice as this was just a formality. The tenant says she never realized her rent was to be paid in full on the first of the month.

The tenant also testified that the landlord "surprised" her at Christmas by serving her with a 10 day Notice to End Tenancy. The tenant says it is harassment to serve a 10 day Notice to End Tenancy at Christmastime.

The tenant says she did not state that she needed her rent money for Christmas shopping. She admits that she did comment that if split payments could be made as had been allowed in the past that this would be easier at Christmas.

The tenant says the landlord is lying when she states that January's rent was late. The tenant says that when she realized she had to start paying her rent in full on the first she tried to pay January's rent on December 31, 2012 but there was no one in the office even though they said they would be open until 1 o'clock. The tenant says her January rent was not late because she paid the rent on January 2, 2013. The tenant says this is acceptable because her lease says she may pay her rent late if the office is not open and the *Residential Tenancy Act* allows this as well. The tenant referred to Clause 2(a) and (b) of her December 1, 2010 Tenancy Agreement which she says is the clause that allows her to pay her rent late. It states:

2. **RENT:** The Resident(s) agree to pay rent in the amount of \$955.00 per month for the premises.

(a) Rent shall be payable in advance at the office of the Resident Manager, or at such places at the Landlord shall designate, prorated to and payable on the first day of each month for the duration of the tenancy. The Resident agrees to pay all utilities except those paid by the landlord, which are none.

(b) The Resident agrees to pay a \$25.00 late rent charge in addition to the total monthly rent if the total monthly rent is not received by midnight on the 2nd day of each calendar month.

The tenant gave further examples of the malicious treatment she says she has received at the hands of the landlord:

- The landlord said they were going to come into my home to see if I had abandoned the premises when they knew full well I was still living there because my vehicle was parked in the parking lot;

- There was a man with backhoe shoveling snow in the parking lot. I pointed to my parking spot to him to see if he would shovel it and he shook his head so I pulled in and parked. He then shoveled all the other spots but not mine. It wasn't until later that I discovered that he was indicating for me to park somewhere else so he could clean my spot. He never came back to clean it;
- One day I went to pay the rent and the door was locked;
- My carpet smells. First they said I could get a new carpet, then they told me they are just going to do the underlay but they kept changing their minds about the carpet;
- The person who came to install the underlay was very rude. He used glue and I had the odour for days. He didn't make proper seams in the underlay and the landlord ignored me when I wrote to ask for a new carpet;
- I called Calgary (head office) and they ignored me;
- There are cigarette burns on the carpet;
- The carpet layer left his carpet knife and a container holding three carpet cutting blades sitting on my laptop. When I moved my laptop the knife and blades fell and could have easily cut my foot;
- They put a notice on my door evicting me;
- They told me not to complain;
- I requested a new mail key, all along they had a mail key but they made me wait for the locks to be changed on the mailbox and when the locksmith changed the lock he left metal garbage near my mailbox;
- Previous tenants had a dog that left feces on my doorstep;
- At 6:30 am I was getting ready for work and one of the tenants was standing in the parking lot with a garden tool hacking at the ice; "No one hacks at the ice up here and I was frightened". When she got home later she discovered her block heater cord was cut off. The tenant says she did not call the police but she did call the property manager who did nothing about it;
- When the previous management's maintenance man came to do handyman jobs he had dirty hands and touched my make-up and pulled out my nail clippers;

The tenant continued that she has been badly treated by the landlord and she has had to endure the door slamming, the blasting music, the stomping of the tenants in 104.

The tenant says the landlord fooled her by usually telling her to ignore the 10 day Notices to End Tenancy and then serving her with a Notice to End Tenancy for Cause on February 2, 2013. The tenant says that she had to run around to find out what to do about the Notice.

The tenant submitted that the first year she lived in the rental unit it was “perfect” but since then it has been terrible. The tenant says she is seeking half of her rent back and this is how she arrived at her claim of \$25,000.00.

The tenant added that the fridge is noisy as it buzzes and whistles and she has to shut it off. The tenant says that the landlord wants to send Mitch to her apartment to fix it but she does not want him in her apartment.

The landlord responded that she has never received a complaint about the fridge. The landlord said the carpets were laid in 1998. The landlord says the tenant signed off that she accepted the condition of the rental unit when she moved in on April 8, 2009. The landlord says that the tenant complained repeatedly about smells coming from the carpet and this was investigated and no smell could be detected. Still the landlord says she agreed to shampoo the carpets but the tenant declined saying she cannot tolerate the chemicals. When the tenant’s complaints continued the landlord agreed to lay new underlay. The landlord says that it is her understanding that the tenant accepted a reduced rent to compensate her as things are not perfect in the rental unit.

The landlord agrees that she was told that the carpet layer left his knife in the tenant’s rental unit but says that this was not malicious, it was an accident.

The landlord submits that they have done everything in their power to try to work with this tenant but they can no longer tolerate her behaviour or her refusing to pay her rent on time as all tenants must do.

Analysis

With respect to the Notice to End Tenancy for Cause: Late payment of rent, I find that the evidence shows that the landlord has a history of allowing tenants to pay their rent late. While it is the goal of this new manager to stop this practice, the evidence shows that even since her arrival in February 2012 the tenant has paid her rent late, been served with a 10 day Notice to End Tenancy which has not been acted upon. In doing this I find that the landlord has acquiesced to the late payments to date. However, it is clear that the landlord will no longer tolerate late payments and that she intends to ensure rent is paid on the first of each month in full.

It appears that while the tenant acknowledges that she must pay her rent on time now, she still maintains that her tenancy agreement and the *Residential Tenancy Act* allow for late payments. This is not the case. While the subject clause in the tenancy agreement allows for one day’s grace before a late fee will be applied, this is not a

clause that allows tenants to pay their rent late. Under the tenancy agreement, rent is due in advance on the first day of each month. With respect to what the Act says about payment of rent, there can be no doubt, it says:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Overall, I find that having accepted late payments over the course of this tenancy I will not allow the landlord to end this tenancy for repeated late payment of rent. However, now that the tenant is fully aware of the requirement to pay rent on time she must ensure to do so. If she does not, the landlord may be successful in another attempt to end this tenancy for repeated late payment. It should be noted that Residential Tenancy policy defines “repeated late payment of rent” as three late payments.

With respect to the ground of “significant interference” I find that the evidence shows that there has been much ado between this tenant and the varying manger/landlords over the course of this tenancy. However, I find that neither party has brought sufficient evidence to fully support their version of events. In the case of ending this tenancy it is the landlord who bears the burden of proof and I find she has failed in this regard. I am not satisfied that the complaints made are of a nature sufficient to end this tenancy. The tenant’s application seeking to cancel the Notice is therefore allowed and the effect of this decision is that this tenancy shall continue as though the Notice issued February 1, 2013 had not been issued.

With respect to the tenant’s claim that the landlord has acted in a malicious manner such that the tenant has lost quiet enjoyment and should be compensated therefor, I find that the tenant has failed to bring sufficient evidence to prove her version of events as well. I find that the evidence shows that the landlord has acted appropriately in the circumstances therefore the claim for \$25,000.00 for loss of quiet enjoyment is dismissed.

With respect to the tenant’s claim for an Order that the landlord comply with the Act I find that the evidence does not support the making of such an Order. Accepting the evidence of both parties I find that the landlord is not ignoring the tenant’s requests for repairs if she is aware of them. With respect to the tenant’s complaints about other tenants, the evidence shows that the landlord did try to engage the tenant in a consultative process for resolving issues between the tenants and that this tenant refused. We cannot overlook the fact that this is a multi-family dwelling. As such,

residents need to be able to work collectively to resolve issues as they arise and given the nature of the building they may also need to tolerate a certain amount of the sounds of day-to-day life. If the situation is or becomes as dire as the tenant has stated then she should be able to bring supporting evidence in the form of sworn witness testimony from other tenants to corroborate the situation. However, this has not been supplied. Overall I find that there has been insufficient evidence to support a finding that the landlord should be compelled to comply with the Act. Further I find that the tenant has failed to bring sufficient evidence to show what services and/or facilities are not being supplied such that a rental reduction should be imposed. Both of these claims are therefore dismissed.

As the tenant has not been successful in all of her claim I decline to award recovery of the filing fee paid for this application.

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: March 12, 2013

Residential Tenancy Branch

