



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant by posting on May 7, 2013. The Tenant testified she personally served a copy of the Tenant's Application for Dispute Resolution on the Landlord on May 12, 2013. The landlord disputes this. She testified the landlord was not served until May 22, 2013 and that the Tenant failed to give the landlord a full copy of the Tenant's Application for Dispute Resolution. I determined that as the landlord provided the Tenant with a full package of materials in preparation for the hearing that I should proceed with the hearing and decide the matter of its merits.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 7, 2013?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- ...
- (d) 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,
 - (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Background and Evidence:

The tenancy began on September 1, 2011. The present rent is \$476 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$400 which has been transferred from another rental unit.

The landlord testified that she seeks to end the tenancy because the tenant has been verbally abusive, threatening and has made scandalous statements about another resident.

In summary the evidence for the landlord is as follows:

- In July 2013 Witness #1 noticed a cat had entered into his rental unit and he followed the cat back to the tenant's unit. He asked that he tenant keep control of the cat as he is allergic to cats. The tenant responded that he should close his doors. Witness #1 reported this to the landlord and the landlord wrote a letter to the Tenant dated July 13, 2013 asking the Tenant to comply with the Pet Policy of keeping her animals confined to her unit at all times.
- In September Witness #1 again approached the tenant about her wandering cat and she responded saying that she would make his life a problem and accused

him of looking at her kids and being a pedophile. Witness #1 called the police and also reported the incident to the police.

- On September 21, 2012 the landlord served a second warning letter on the tenant that her cats must be kept confined.
- On September 26, 2013 the Tenant came to see the landlord and was extremely upset. The landlord produced a note to file in which the tenant told her that she was going to make Witness #1's life miserable by calling the Police and claiming he was a pedophile. She was swearing and raising her voice. She also told the landlord that her daughter was allergic to cats so she could not keep the cats inside and as a result kept the cat on the balcony.
- Witness #1 testified that on September 26, 2013 the tenant approached him and accused him of reporting her cat to the landlord. The Tenant was angry and swore at him. He telephoned the police after that incident.
- In a letter dated October 3, 2013 the landlord wrote the tenant stating that the tenant was breaching her neighbour's right to quiet enjoyment and if they received any further reports it would result in an automatic eviction notice.
- On October 9, 2012 the tenant reported to the landlord that a stranger was in the carport of Witness #1 and she thought this was a drug deal happening. The landlord investigated immediately and she witnessed a car pulling into the carport of Witness #1 and his two adult children leaving the car. The tenant yelled over her back balcony "Take your drug deals somewhere else" but there was no one there.
- On May 2, 2013 Witness #1 was working in his garden at around 8:30 p.m. when he heard kids screaming. He looked up at where the noise was coming from. He heard the tenant say "Looking at little girls again, you f---king pedophile." Witness #1 resides close to a play ground and another person heard this accusation although he was not able to identify who that person was. Witness #1 called the police. He reported it to the landlord.
- Witness #1 testified the accusations have significantly interfered with and unreasonably disturbed his enjoyment of the rental unit. The tenant's accusation

and her conduct threaten his reputation and are without basis. It has caused him considerable stress. He is worried about the impact such unwarranted accusation might have on his two twin 21 year old sons who are living with him. He testified that a mere accusation even without any proof is enough to devastate a person's reputation. He has talked to a lawyer and is considering a civil suit.

The tenant disputes much of the landlord's evidence and testified as follows:

- She testified that she never accused the tenant of being a pedophile as she would not use such a word. However, she did acknowledge that she has accused him of being a child molester.
- The tenant testified she approached the landlord after receiving the one month Notice and the landlord failed to give her full particulars as to the basis for the Notice.
- She testified that the issue of the cats has been dealt with. Two of the cats are no longer living with her and were placed elsewhere in October 2012. The other cat is a rescue cat that is afraid of people and does not leave her balcony.
- She stated the RCMP visited her in July 2013 and told her not to threaten Witness #1 but they could not have taken it very serious as no file number was provided.
- She testified that she must get out of her car to open the garage door. Often she is on her cellular phone or she could be talking to someone else in the car. Perhaps witness #1 mistook her discussion with someone else.
- The tenant read a letter from her 10 year old daughter. This document was not made available to the landlord before the hearing. The letter from the daughter states that Witness #1 was staring at her and her sisters and it asks why is he (Witness #1) watching us.
- The tenant submits that asking questions and actively protecting the safety of her young children are not grounds for eviction.

Analysis

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

I prefer the evidence of Witness #1 to that of the Tenant where it is dispute for the following reasons:

- The tenant was misleading at the hearing. She initially testified that she served the landlord with a copy of her Application for Dispute Resolution on May 12, 2013. This is not true. The evidence provided indicates there was a problem with the e-mail address given to the Residential Tenancy Branch by the Tenant and that she did not receive the documents until much later. The tenant failed to give a sufficient explanation for this false testimony.
- The notes to file written by the landlord's agent at the time of their meetings with the tenant indicates that tenant was very upset with Witness #1, that she intended to make life miserable for him by calling the Police and claiming he was a pedophile. There is no rational reason why the landlord's agent might misquote the tenant when she wrote this note shortly after the meeting.
- While the tenant denied calling the tenant a pedophile she did acknowledged she accused him of being a child molester. The tenant failed to present proof that the allegations are in anyway true. Both accusations are very threatening to the reputation of another person.
- Witness #1 testimony was consistent with his conduct in contacting the police and the landlord. It is in harmony with the preponderance of probabilities which a

practical and informed person would readily recognize as reasonable in that place and in those conditions.

- The conduct of the tenant when responding to these complaints as evidenced by the landlord's agents show the tenant's conduct is motivated by malice.

As a result I am satisfied on at least two occasions the tenant has accused the tenant of being a child molester and pedophile. The tenant has not presented proof to establish such a scandalous allegation and there is no basis for doing so. Further, I am satisfied that it was done with malice to get back at Witness #1 for his complaints to the landlord about her cats. I am also satisfied that on several occasions the tenant has very abused Witness #1 and the staff of the landlord using profane language. The landlord has acted appropriately. The landlord gave the tenant two warning letters relating to her cat. More importantly she gave the tenant a warning letter on October 3, 2013 that she was breaching her neighbour's right to quiet enjoyment and was warned that any further conduct on her part would result in an eviction process.

I do not accept the tenant's submission that she was merely asking questions and that she was looking after the safety of her children. If she was truly looking after the safety of the children she should have reported any improper incident to the police and even the landlord.

I am satisfied the landlord has established sufficient cause to end the tenancy. The tenant has significantly interfered with and unreasonably disturbed another occupant and the landlord by making these false and improper accusations and by the profanity and threatening conduct directed at Witness #1. Further, the tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

Determination and Orders

I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end. The Notice to End Residential Tenancy sets the end of tenancy date as June 15, 2013. The rental payment period ends on the last day of each month. The Residential Tenancy Act provides that where a landlord ends a tenancy under a one month notice, the landlord must give the tenant a clear month notice on or before the end of the rental payment period to be effective at the end of the ensuing rental payment period. The Act self corrects an improperly dated Notice. Thus the end of tenancy date is June 30, 2013. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request at the hearing. **As a result I granted the landlord an Order for Possession effective June 30, 2013.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: June 05, 2013

Residential Tenancy Branch