



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMHA Kootenays
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, AAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received the 1 Month Notice posted on her door on April 26, 2013. The landlord confirmed that on May 14, 2013, she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail. The tenant and her advocate confirmed that they had received and reviewed the landlord's written evidence package. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

At the commencement of this hearing, I noted that the tenant applied for dispute resolution within 10 days of being deemed served with the landlord's 1 Month Notice. As such, there was no need to consider the tenant's application for more time to apply for dispute resolution. The tenant withdrew her application to be allowed to let her brother stay in the rental unit with her. She did so as she has recovered from her surgery such that she no longer needs him staying with her. Both of these portions of the tenant's application for dispute resolution are withdrawn.

The landlord made an oral request for an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy for a subsidized rental unit in a multi-level rental building commenced on September 24, 2012. The tenant's portion of the \$563.00 economic rent for this rental unit is currently \$375.00, plus hydro. The landlord continues to hold the tenant's \$282.00 security deposit.

Both parties entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by May 31, 2013, the landlord cited the following reason for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*

The landlord submitted a number of chiefly anonymized letters from other tenants in this building complaining about various aspects of their interaction with the tenant, her brother and a man who repeatedly hurried to the tenant's rental unit when complaints about him arose. Many of these letters identified the tenant and sometimes the male, who the landlord identified as an apparent guest of the tenant, as the persons knocking on the doors to their rental units at various times of the day and the evening. The landlord also provided a letter from an adult child of one of the other tenants in this building who claimed that there was an overpowering smell of marijuana emanating from the tenant's rental unit or her portion of this building. The landlord also entered into written evidence a series of warning letters regarding the tenant's failure to abide by the terms of her tenancy agreement in allowing her brother to stay with her while she convalesced from surgery. Although the landlord referred to Police File numbers in her sworn testimony and written evidence, she provided no copies of any Police Reports nor did she call any police officials as witnesses for this hearing. At the hearing, I advised the landlord that I could not access Police Reports through her provision of Police File numbers and could only consider the evidence before me at this hearing.

The landlord also noted that the tenant had not paid her June 2013 rent. I informed her that non-payment of rent was not an issue included in the landlord's 1 Month Notice, and was a separate issue that the landlord would need to pursue with the tenant.

The tenant gave undisputed testimony that her brother moved from her rental unit some time ago. The tenant testified that the male who was the source of complaints about her rental unit was an uninvited acquaintance of her brother. She said that whenever he appeared on the property and at her rental unit, she told him to leave and often called the police to have him removed. She said that he told her that he was going to ensure that she got evicted. She testified that the most recent police action led to this man being absent from the area for some time. The landlord confirmed that complaints about this man have diminished in the past two or three weeks. She testified that she has received no further complaints about him over that period.

Analysis

Section 28 of the *Act* protects a tenant's right to quiet enjoyment. This right applies equally to all residents in the complex. Section 47(1)(d)(i) of the *Act* allows a landlord to end a tenancy for cause if:

(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,...

If the landlord had provided sufficient evidence to demonstrate that the tenant had engaged in some of the conduct described, I find that these actions may very well have constituted significant interference and unreasonable disturbance of other occupants in this multi-unit rental building. However, the question of what occurred is not an easy determination to make with nothing more than the conflicting verbal testimony before me and reports received from third parties who were not present at the hearing, particularly as the burden of proof to justify ending the tenancy is on the landlord. The landlord had little direct evidence to provide regarding these alleged disturbances. The tenant's brother, an apparent source of some of the complaints, no longer lives with the tenant. I also find that the tenant's account of her dissatisfaction with the behaviours of the male acquaintance of her brother was as convincing as the evidence about this individual provided by the landlord.

I find that, whenever a tenant's conduct becomes bothersome to other occupants, the landlord has an obligation to issue a written warning to make sure that the tenant understands what complaints and allegations have been lodged and the precise nature of the conduct that is expected. The tenant also should be told that unacceptable conduct may risk termination of the tenancy if it continues. While some warning letters were issued by the landlord, ending a tenancy is a drastic measure that is seen as a last

resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour.

While knocking on doors to borrow a telephone appears to conflict with other residents and some of the tenant's behaviour and that of her guests may be perceived as disturbing to fellow renters, I find that the landlord did not sufficiently prove that the tenant's conduct had reached the threshold where termination of this tenancy was necessary.

Given the above, I find it necessary to cancel the 1 Month Notice. However, the tenant is cautioned that this decision will now serve as a written warning and the tenant is now aware that if she disturbs other tenants by banging on doors at various times of the day or otherwise disturbs other tenants in this building, such conduct may justify terminating her tenancy. As noted at the hearing, I caution the tenant that, should the landlord receive ongoing complaints of disturbances caused by the tenant or her guests, or should it be found necessary for police to conduct visits to the rental unit due to noise complaints caused by the tenant or her associates, this also could function as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the *Act*.

Conclusion

I allow the tenant's application and cancel the landlord's 1 Month Notice of April 26, 2013, which is of no force nor effect. This tenancy continues.

The tenant is hereby cautioned that continued disruption of the quiet enjoyment of other tenants or the landlord will place the future of her tenancy at risk.

The remainder of the tenant's application is withdrawn.

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 04, 2013

Residential Tenancy Branch