



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 Notice to End Tenancy was personally served on the Tenant on June 30, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on July 8, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated June 30, 2013?

Background and Evidence

The tenant testified that she moved into the rental unit approximately 7 years ago. The landlord testified their records indicate show a written tenancy agreement that provided that the tenancy was to commence on February 1, 2009. The present rent is \$425 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$212.50 at the start of the tenancy.

The relevant evidence presented by the landlord is as follows:

- A letter dated February 12, 2012 from a paint contractor that stated the woman from the rental unit came out of her suite waving a hammer and screaming they (the contractors) were making too much noise.
- A letter from the contractor business stating that the woman from the rental suite has been continually using foul language towards his workers and confirming the incident where she came at them with a hammer.
- A warning letter dated February 15, 2012 to the tenant from the landlord stating if there was any more trouble the landlord would have no alternative but to commence eviction proceedings.

Witness #1 testified that she is the Property Manager. The rental property contains 34 units. In the late spring and early summer it became apparent there was a major problem in the form of extensive drug dealing from residents in the property. The previous caretaker left because of a serious drug problem. She testified she asked Witness #2 (the manager of another building to help out) and solve the problem.

Witness #2 testified that he was asked to come into the building on June 6, 2013. Over the next few days he introduced himself to all of the residents. On or about June 12, 2013 the tenant approached him asking to speak in private. She told him that

- The previous manager was coerced into drugs and prostitution through people that she associated with.
- That it would be in his best interest not to do anything to change the operation that was happening in the building.
- He should take money that her associates would give him (\$2000 per month).

Witness #2 told the tenant he was not that type of person and that it was his job to protect all of the residents of the building and provide a safe and secure environment.

Witness #2 testified he witnessed and the security camera footage verified an excessive number of people visiting the tenant's unit at night, staying for a short period of time and

leaving through the back entrance. He further testified that a number of tenants have approached him and expressed concerns about the illegal trafficking of drugs in the building.

The landlord produced a letter from ME dated June 20, 2013 stating that he witnessed the resident of the rental unit bear spray people on three occasions and punish non residents for using the bathroom which she considers to be hers. The letter states that she stalks the rental property and on at least 12 occasions hammer on the bathroom door while he is in it. She threatened him with bodily harm and stole his FOB. She leaves her door open so that everyone has to breathe her cigarette and crack smoke and that everyone has to hear her constant loud drug talk and embarrassing drug confrontations.

Witness #2 testified the previous security company quit after saying that it was too unsafe for their employees to be patrolling in this building. The landlord hired a new security firm called Aops International Security who was represented by Witness #5.

Witness #5 testified as follows:

- His firm was hired in early June and they have kept a detailed log of the happenings in the building. They usually had a representative on site between the hours of 10:00 p.m. and 7:00 a.m.
- The logs were kept in the ordinary course of business and indicate there was a steady stream of traffic to the tenant's unit. The people would stay for a short period of time and often leave by the back entrance.
- He testified that he has personally witnessed of between 25 to 30 a night go to the tenant's rental unit. On occasion the alarm would be tripped by the tenant's leaving by the back entrance.

Witness #3 testified that he was hired by the landlord to act as a caretaker around the middle of June. On June 21, 2013 the tenant approached him while he was cleaning

the washroom violent using foul language stating he was being noisy. He responded that he was just doing his job. Her response was “the only cleaning required here is f.....g cleaning you out of here and I have the people that will do this, so watch out you f.....r”

Witness #4 testified that she was also threatened when she asked the tenant to close her door.

The tenant gave the following testimony:

- She has been a tenant here for 7 years
- That there have been 14 other evictions in this building in the last month
- She denied the incident that took place a year ago when it was alleged that she threatened the paint contractor with a hammer. She testified she is allergic to drywall dust and was not in the building.
- She did not deny the conversation with Witness #1 but she stated she was delivering a message from drug dealers that he should not do to change the operation but that she has no involvement in the drug dealing.
- She testified that she sells cigarettes on the side and has a lot of friends. She denied selling drugs. She submitted that if she was selling drugs why haven't the police arrested her.
- She acknowledged there has been a lot of drug dealing coming from this building but denies she was involved.

Grounds for Termination

The Notice to End Tenancy relies on the following grounds:

Landlord's notice: cause

(c) there are an unreasonable number of occupants in a rental unit;

(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,

...
(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

...
(ii) 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, or

Analysis

The landlord has the burden of proof to establish sufficient cause based on a balance of probabilities. This is not a criminal case where the burden of proof is beyond reasonable doubt.

I determined the landlord has failed to establish sufficient grounds to end the tenancy on the basis that there is an unreasonable number of occupants in the rental unit.

Occupants refer to people that are living in the rental unit as their residence. The only evidence before me is that the tenant lives in the rental unit and she has a large number of visitors who stay for a short period of time.

However, I am satisfied based on the evidence presented that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Further, I am satisfied that the tenant or 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. I determined the landlord has presented sufficient proof to establish the tenant has engaged in the selling of illegal drugs from her rental unit. I do not accept the testimony of the tenant that she is selling cigarettes. Further, I am satisfied that this activity is likely to adversely affect the quiet enjoyment, security and safety of another occupant. The visitors are leaving by the backdoor impairing the security of the building. Finally, I am satisfied the tenant has threatened other residents

and several of the landlord's representatives with physical harm and has subjected them to verbal abuse.

Determination and Orders

After carefully considering all of the evidence 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. The rent has been paid until the end of August. I order that the tenancy shall end on August 31, 2013.**

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 August 31, 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. name suppressed to protect privacy]

Dated: August 08, 2013

Residential Tenancy Branch