



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OLC RP LRE LAT RR O

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, make repairs to the unit, site or property, to suspend or set conditions on the landlord’s right to enter the rental unit, for authorization for the tenant to change the locks to the rental unit, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided to the landlord, and “other”, although the details of “other” provided in the application are already addressed by the other remedies applied for by the tenant.

The tenant, an articling student representing the tenant, a witness for the tenant, and two agents for the landlord (the “agents”) attended the hearing. At the start of the hearing I introduced myself and the participants. The parties had the dispute resolution process explained to them and were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing, the parties were advised that all documentary evidence from both parties was being excluded from the hearing as both parties submitted their documentary evidence late, and not in accordance with the rules of procedure. As a result, the documentary evidence submitted by the parties has not been considered.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution,

the most urgent of which is the application to set aside the 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"). I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 1 Month Notice at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The parties agreed that a fixed term tenancy agreement began on May 1, 2013 and reverted to a month to month tenancy after October 31, 2013. Monthly rent in the amount of \$1,000.00 is due on the first day of each month. The parties agreed that the tenant paid a security deposit of \$500.00 and a pet damage deposit of \$300.00 at the start of the tenancy.

The tenant confirmed that she was served on November 19, 2013 with the 1 Month Notice dated November 19, 2013, alleging two causes. The first cause listed on the 1 Month Notice indicates that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The second cause listed on the 1 Month Notice indicates a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant disputed the 1 Month Notice on November 29, 2013, which is within 10 days of being served with the 1 Month Notice on November 19, 2013. The parties agreed that the effective vacancy date written on the 1 Month Notice is listed as December 31, 2013.

Regarding the first cause listed on the 1 Month Notice, the agents referred to five documents served on the tenant, all of which the tenant indicated she had received from the landlord. I have summarized the five documents below, including the testimony of the parties for each document.

1. The first document was dated September 26, 2013, and alleges that the tenant was contacting the caretaker for non-emergency matters at unreasonable times; the tenant was leaving common area doors open; and the tenant was disturbing other occupants.

The agents testified that the tenant was calling the caretaker up to midnight for matters that were of a non-emergency nature. The tenant denies all three allegations as claimed by the landlord. The agents were unable to provide dates or times related to the allegations made against the tenant in the first document.

2. The second document was dated October 4, 2013 and referred to section 17 of the tenancy agreement regarding “conduct”, which the parties agreed to as:

“17. Conduct – In order to promote the safety, welfare, enjoyment and the comfort of other occupants and the tenants of the residential property and the landlord, the tenant(s) must not disturb, harass or annoy another occupant of the residential property or the landlord or a neighbour. In addition, noise or behaviour which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential property or other person must not be made by the tenant or the tenant’s guest, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord. The tenant or the tenant’s guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or another person at any time, and in particular, between the hours of 10 pm and 9 am. If any tenant or tenant’s guest causes another tenant to vacate his rental unit because of such noise or other disturbance or because of illegal activity by the tenant or the tenant’s guest, the tenant must indemnifying and save harmless the landlord for all costs, losses or damages or expenses caused thereby. The landlord may end the tenancy pursuant to the *Act* as one of his remedies.”

[reproduced as described by the agents]

The agents did not provide dates or times in relation to the second document. The tenant did not agree that she did anything to prompt the second document.

3. The third document was dated November 4, 2013 and also referred to section 17 of the tenancy agreement regarding “conduct”. The agents testified that the tenant called the landlord 49 times between October 2, 2013 and November 4, 2013, which prompted the landlord to issue the document dated November 4, 2013. The tenant testified that she only called the landlord 20 times in total and nothing more. She also asked, “My number was call blocked and private so how would they know it was me?” The agents responded by stating that their total of 49 calls from the tenant were either messages left for the landlord or calls that they received from the tenant, and did not include calls that were missed or where a message was not left for the landlord. In the third document dated November 4, 2013, the agents stated that the landlord had received two written complaints regarding the tenant. The first complaint was from occupant BG

in unit 101, which read in part, “the tenant hangs instructional notices throughout the building and is very intrusive”, and was received by the landlord on October 16, 2013. The second complaint was from occupant MB in unit 204, dated November 4, 2013, which read in part:

“...for the second time in one month as my husband and I just moved in and have been here for one month the female tenant in 01 has become abusive, aggressive and out of control. She comes tearing out of her front door screaming at the top of her lungs that we were looking in her windows and should not walk past her door. The second incident when she flew out of her apartment screaming again about looking in her windows once again we ignored her, this time however, she came charging up the stairs screaming. She was screaming at top volume. We got home and called [name of caretaker] immediately.”

[reproduced as read by the agent]

The caretaker stated that she received the call referred to by tenant MG above, on November 4, 2013, which was the incident which prompted the landlord to issue the document to the tenant dated November 4, 2013. The tenant confirmed that she did approach the tenants in unit 204 on October 13, 2013, and did not advise the landlord that she approached the tenants in unit 204, as she, “did not trust the landlord as they didn’t fix my toilet”. The tenant alleged that she witnessed the tenants looking in her window and asked them not to do that again.

4. The fourth document is dated December 2, 2013, and indicates that the tenant contacted the office of the landlord repeatedly for non-emergency matters by calling 44 times between November 4, 2013 and December 2, 2013, after being advised previously to put all non-emergency matters in writing to the landlord. The tenant disputed making 44 calls and stated that she did not make any calls since November 4, 2013. The tenant reiterated that she made 20 calls between October 2, 2013 and November 4, 2013 and did not make any further calls to the landlord after that. The agents alleged that on November 13, 2013, that the tenant called them and said, “you will be sorry”. The tenant denied saying, “you will be sorry”, but did confirm that on November 12, 2013, she called the landlord and advised them, “if you enter with the inspection being cancelled, I will call the police.”

5. The fifth document is dated December 4, 2013, where the landlord alleged that the tenant parked in the parking stall of another tenant in the building. The tenant denies that she parked in another tenant’s parking stall.

The tenant called a witness, “JB”, who indicated that she was a tenant in the building between March 12, 2013 and December 31, 2013, and had met the tenant on several occasions, usually on the ground floor as that was the floor where the tenant lived. Tenant witness JB described the tenant as a, “friendly neighbour”, and denied ever having any disputes with the tenant or witnessing the tenant having any disputes with other tenants in the building. She also described the caretaker as a, “good landlord”.

The parties disputed a matter related to a plumber accessing the rental unit in response to a complaint from the tenant regarding a toilet that, according to the tenant, “kept on running” and was need of repair. Each party provided a different version of the events leading up to the ultimate repair of the tenant’s toilet.

Analysis

Based on the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – The 1 Month Notice is dated November 19, 2013, and has an effective vacancy date of December 31, 2013. The tenant disputed the 1 Month Notice on November 29, 2013, which is within the 10 day timeline as provided under section 47 of the *Act*. The onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord provided oral testimony regarding five documents which the agents stated support the first cause listed on the 1 Month Notice.

I find that I prefer the evidence of the agents over that of the tenant as the tenant’s testimony was inconsistent during the hearing. For example, the tenant first testified that she only made 20 calls to the landlord in total and nothing more than 20 calls. The tenant denied making 89 calls to the landlord as alleged by the landlord, then later changed her testimony by testifying that she did make a call on November 12, 2013 where she confirmed that she told the landlord that she would contact the police if the landlord entered her rental unit if the inspection was cancelled. Therefore, I prefer the testimony of the agents and I accept that the tenant called the landlord 93 times between October 2, 2013 and December 2, 2013, which I find excessive and would interfere with the landlord’s ability to manage the building and respond to the complaints or concerns of other tenants in the building, as required by the *Act*.

During the hearing, the tenant confirmed that she approached other occupants in the building in unit 204, with her complaints related to the occupants in unit 204, and confirmed that she did not advise the landlord and did not ask the landlord to investigate her concerns regarding those occupants as she, “did not trust” the landlord. As a result, I

find that on the balance of probabilities, I prefer the testimony of the agents who stated that the occupants in unit 204 wrote to the landlord on November 4, 2013, which is consistent with the date of the document written to the tenant of that complaint, and where the occupants in 204 write that the tenant, "...has become abusive, aggressive, and out of control...". The remedy for the tenant would have been to put her complaints in writing to the landlord, and if the landlord did not respond in a timely manner or to the satisfaction of the tenant, to seek remedy under the *Act*, not to approach other occupants and risk eviction.

I afford the testimony of the tenant's witness little weight in my decision due to the fact that although the witness may have had a good relationship with the tenant, the tenant did not refute any of the specific complaints referred to by the agents, such as the complaint from occupant MB in unit 204, which prompted a letter from the occupant to the landlord dated November 4, 2013.

Given the above, I find the landlord has met the burden of proof by proving the first cause listed on the 1 Month Notice; that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant should not have approached other occupants in the building as that behaviour was disturbing, and I find the evidence supports that other occupants in the building have been disturbed by the tenant. As a result, I find that it is not necessary to consider the second cause listed in the 1 Month Notice as the landlord has successfully proven the first cause. **I dismiss** the tenant's application in full, without leave to reapply. **I uphold** the landlord's 1 Month Notice dated November 19, 2013.

Agent MJ verbally requested an order of possession during the hearing. Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and taking into account the agent MJ's oral request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession effective **two (2) days after service on the tenant** as the effective vacancy date listed on the 1 Month Notice, December 31, 2013, has passed. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2014

Residential Tenancy Branch

