



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and for an order to have the landlord complete repairs.

The hearing was conducted via teleconference and was attended by the tenant and her witness; three agents for the landlord and three witnesses for the landlord. The tenant had identified a second witness who was not available at the time I tried to call her into the hearing.

Due to the restricted availability of one of the landlord's witnesses her testimony was heard at the start of the hearing with a brief introduction from the landlord as to the issues identified in the Notice to End Tenancy.

After this testimony was heard the witness was excused and I reviewed the Application for Dispute Resolution with the tenant. She indicated that she had inadvertently checked off the box seeking repairs and she did not seek any such orders as part of her Application. I amend the tenant's Application to exclude the matter of repairs.

The tenant's witness had provided a written statement as well as her verbal testimony. I note this because the witness was using a phone in a location that provided loud surrounding noises and the witness was difficult to hear during her testimony.

I confirmed with the landlord's agent if they had received the witness's written statement and if they had any questions for the witness but the landlord indicated they had no questions for the witness.

During the hearing, the landlord's agent verbally requested an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in her Application seeking to cancel the 1 Month Notice to End Tenancy for Cause it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the Act.

Background and Evidence

The parties agree the tenancy began on July 15, 2005 as a month to month tenancy for a rental unit with a market rent of \$1,190.00. The tenant's unit is subsidized and the tenant's portion of rent is currently \$500.00 per month due on the 1st of each month.

The landlord submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on December 17, 2013 with an effective vacancy date of January 31, 2014 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardize a lawful right or interest of another occupant or the landlord; and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after a written notice to do so.

The landlord submitted substantial documentation dated from November 2006 onward and testimony regarding the history of the tenancy including:

- letters of complaints from other tenants regarding this tenant;
- letters of complaints from the tenant regarding other tenants;
- warning letters from the landlord to the tenant regarding various infractions and behavioural activities that had caused disturbances to other occupants in the complex;
- testimony regarding a threat made against one of the landlord's agents by one of the tenant's guests;
- testimony related to former tenants who had neighbored this tenant's unit and had ended their tenancies because of this tenant's behaviour and activities. This testimony included that some of these tenants no longer live in other complexes managed by this landlord and there are no issues with those tenants or their neighbours; and
- testimony from three current tenants/occupants who state the tenant has harassed them for such things as having the television on or the bass too loud; walking too loudly; odd and scary behaviour in front of their children; making unfounded reports to the Ministry of Children and Families regarding child protection issues; repeated police calls related to the tenant; use of and sale of drugs in and around the rental unit; deliberate placement of garbage in front of other tenant's units and in their mail boxes.

The landlord submits that despite having repeated complaints from the start of her tenancy from other tenants in the complex the landlord was never able to end the tenancy because none of the complainants wanted to be involved by providing written complaints or acting as witnesses for any relevant dispute resolution proceedings.

The landlord submits that they have issued this Notice because they now have three tenants/occupants who are willing to provide testimony and evidence. All of these tenants/occupants have provided either written complaints and/or testimony in this hearing.

The tenant acknowledges that a guest she had over once did threaten the landlord's agent but that she had hardly known the man and he also assaulted her and he has been arrested. The tenant denies all other complaints against her as either none existent or because the party making the complaint had an ulterior motive.

Despite the landlord's witness's testimony that the tenant has marijuana plants growing in her unit and that her son has been selling marijuana out of the unit the tenant submits that she and her family do not use marijuana and that they have not been selling it from the unit.

The tenant submits that there are a number of teenagers who congregate in an area near her unit who smoke marijuana and cause mischief. She states that she goes and cleans the area after the teenagers have been there because the landlord does not do anything about it.

She states she has sent the landlord a written complaint about the teenagers including pictures. The landlord submits that they have no record of the tenant ever providing such a complaint or photographs.

The tenant submits that the reason the one neighbouring tenant is making these complaints is because she is upset that the tenant had a sexual relationship with her partner. The neighbouring tenant's partner was one of the witnesses for the landlord and he testified that he had never had a sexual relationship with the tenant.

The tenant provided into evidence letters from 3 other tenants in the complex who submit that they have never experienced any disturbances caused by the tenant and that they find the tenant to be a nice person who is an asset to the complex. The witness who attended the hearing on the tenant's behalf was one of the tenants who wrote 2 of the letters submitted.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. 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
 - ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- c) 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.

In regard to the landlord's assertion of a breach of a material term I find the landlord has failed to provide any evidence of such a breach. Therefore I find the landlord cannot rely upon this as cause to end the tenancy.

In relation to the landlord's assertion that the tenant has engaged in an illegal activity I find that as the tenant disputes the assertion and the landlord's witness's testimony is not confirmed in any way from local police, such as the confirmation of charges laid against the tenant, the landlord has failed to establish that the tenant has engaged in any illegal activity. Therefore, I find the landlord cannot rely upon this as cause to end the tenancy.

However, when I consider the landlord's evidence for the duration of the tenancy including their undisputed testimony regarding former tenants who now live in other complexes administered by the landlord, I find that there is one common denominator – the tenant.

As such, I find the landlord has provided sufficient evidence to establish that the tenant has a long history of significantly interfering with and unreasonably disturbing other tenants in the residential property. I also accept that the landlord has been unable to end the tenancy on these grounds in the past due to the unwillingness of complainants to become involved in the process.

Therefore, based on the landlord's evidence and a balance of probabilities I find the landlord has established sufficient cause to end the tenancy. I find the 1 Month Notice to End Tenancy for Cause issued on December 17, 2013 to valid and effective and the tenant must vacate the rental unit. I dismiss the tenant's Application to cancel the Notice.

Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice.

As I have dismissed the tenant's Application and because the landlord verbally requested an order of possession during the hearing I find, pursuant to Section 55, the landlord is so entitled.

Conclusion

I grant the landlord an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: February 19, 2014

Residential Tenancy Branch

