



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M&R WHISTER SUPERIOR HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking an order to end the tenancy early and receive an order of possession.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties and two Witnesses provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issues(s) to be Decided

Is the Landlord entitled to end the tenancy early and obtain an order of possession?

Background and Evidence

The Landlord has claimed that the Tenants have, without permission or approval and in contravention of the tenancy agreement, allowed other occupants to occupy the rental unit. The Landlord also claims that many people are coming and going from the rental unit and there is a lot of noise, which disturbs other occupants in the residential building. The Landlord further alleges the Tenants are involved in the drug trade.

Other occupants in the residential building have also complained to the Landlord about the activities at the Tenants' rental unit. The Landlord had two witnesses testify, both of whom live in the residential building where the subject rental unit is located.

Witness 1 testified that on or about March 7, 2014, around 3:30 p.m. in the afternoon, he called the Landlord to complain about a very strong chemical smell coming from the subject rental unit. The smell went into the foyer of the building and travelled upstairs into the rental unit of Witness 1.

The Witness testified that his rental unit is directly above the subject rental unit. He testified that the strong chemical smell gave him a headache. He testified that the child of another person began coughing due to the chemical smell.

Witness 1 testified that he sees many people coming and going from the rental unit at all times. He testified that the buzzer for the subject rental unit goes all through the night and all day. He testified he has witnessed many people going into the rental unit and that he has seen homeless people coming and going from the rental unit.

Witness 1 testified he sees many people coming and going from the rental unit after midnight. He testified that on one occasion he saw a person from the rental unit do a drug deal at the back of the building.

Witness 1 further testified he does not feel safe in his rental unit anymore and will likely move out if the Tenants in the subject rental unit do not move out.

The Tenant cross-examined Witness 1 regarding the person from the rental unit he alleges he saw conducting a drug deal at the building. The Witness described the person and testified he often sees this person coming and going from the rental unit. He alleges this person lives in the rental unit.

The Tenant denied this person lives in the rental unit or has come there.

The Tenant cross-examined Witness 1 as to how he knew the smell came from the subject rental unit, and why he thinks this person was from the subject rental unit and not another.

Witness 1 testified that there are only three rental units on the ground floor and he sees this person only coming and going from the subject rental unit. He testified that he was certain the strong chemical smell could only have come from the subject rental unit.

Witness 2 testified she used to feel comfortable and safe in her apartment, although she no longer feels safe in the building because of the Tenants. She testified that she was afraid of the chemical smell coming from the subject rental unit as it was very strong. She testified that she did not know what the smell was but another neighbour told her it

smelled like someone was cooking crack cocaine. Witness 2 testified this was a powerful smell and went through everywhere in her unit and in the building.

Witness 2 further testified that she woke up one morning at around 6:30 am and the strong chemical smell was there again and throughout the building. Witness 2 testified that she called the police, although they did not attend until about three hours later and the smell had gone by then. Witness 2 testified that the police informed her that she should call the fire department next time she smells this, as they can often be there more quickly than the police and can enter an apartment to investigate the smell.

Witness 2 further testified she is concerned because the chemicals may explode or catch fire. Witness 2 testified that she has lived in the building for over a year and never heard a smoke alarm go off in the building, until the Tenants moved in. She testified that ever since the Tenants moved in their smoke alarm is going off constantly.

Witness 2 testified that she sees people coming and out of the subject rental unit very often, and they often just stay for a few minutes then leave. Witness 2 testified that the doors to the building are being left open, and when the Tenants are coming and going the doors are being slammed often. She testified that recently she heard and saw a young woman was pounding on the window of the subject rental unit repeatedly and just continued to pound on the window. The Witness said when she looked out at the young woman from above the girl kept banging until she saw Witness 2 looking at her and then she quickly left.

Witness 2 testified that she feels uneasy in the building and in her home. She explained she would be moving out if the Tenants did not vacate. She testified she gets along well with other people in the building but is not comfortable with the Tenants and their guests. She testified that the chemical smell cannot be good. She further testified that there are so many people coming and going to the rental unit and they seem to get into the building whenever they want. She testified that the entrance buzzer seems to ring forever.

The Tenant cross-examined Witness 2 and asked if the Witness had ever met the Tenants, and the Witness responded that she had not.

The Tenant asked Witness 2 what the police told her about what they found in the subject rental unit. Witness 2 responded that by the time the police had got there the Tenants must have had plenty of time to open the windows and air out the place, as the smell had been so strong before.

The Tenant asked Witness 2 if the chemical smell was Pinesol, and explained that one time she found the entrance floor to the building was sticky so the Tenant washed the floor using Pinesol. Witness 2 replied it was not Pinesol as she was well aware of what Pinesol smelled like as her mother used it in the house. Witness 2 also stated that it was not bleach or any other kind of cleaner smell.

The Agent for the Landlord testified next. She testified that she received a call from Witness 1 complaining about the smell. The Agent testified that when she arrived at the building she right away smelled the strong odor when she went into the building. She testified that it was not a normal smell, but was not sure if it was cocaine. The Agent testified she went to the subject rental unit and knocked on the door. She testified a lady came to the door that she did not recognise and asked what the Agent wanted. The Agent explained about the strong smell and she wanted to come into the rental unit. The Agent testified this lady would not let her in. The Agent alleges this lady is living in the rental unit and is not the Tenant. The Agent testified there were about five men and the one lady in the rental unit and they told her the Tenants were not home.

The Agent told the lady that she was calling the police and then the people left the rental unit; by the time the police arrived the people had left and the smell was gone. She testified she never saw the female Tenant at the rental unit.

The Agent for the Landlord testified she gave the Tenants a one month Notice to End Tenancy for cause, on or about March 8, 2014.

The Tenant acknowledged receipt of the one month Notice to End Tenancy and explained she had disputed this Notice and a hearing was set for May of 2014.

The other Agent for the Landlord testified and submitted that every time he goes to the building he sees people coming and going from the rental unit. He testified and submitted that he goes to the building every 2 or 3 days to clean. He testified he spoke with the male Tenant on or about March 10 about smoking drugs and crystal meth in the building. According to the Agent, the male Tenant told him that he knew that and apologized and said he would not smoke in the building anymore.

The Agent for the Landlord testified and submitted that he received a call from the police on or about April 9, 2014, and the police told him that there was a strong smell of crystal meth coming from the subject rental unit and the Landlord should give the Tenants a notice to end the tenancy. The Agent testified that the police informed him the other renters in the building could be in grave danger. The police officer gave the Agent for the Landlord a police file number.

The Tenant cross-examined the Agents and asked if the police told him there were no drugs found in the rental unit? The Agents denied that and explained that they never saw the female Tenant there and they have seen so many people in the rental unit.

The Tenant replied to the Landlord's claims and testified that at most they may have had six people in the rental unit at once, between her and her boss or other friends, her cousin and his girlfriend and the business partner of her cousin. The Tenant testified that the Agent for the Landlord comes often to the rental unit and is harassing them. She alleged that one of the Agents for the Landlord put his hand on one of their guests. The Tenant testified she wants the harassment to stop. She testified that she gets called everyday for the rent, even though she pays it on time. She testified that on both occasions that the police have come to the rental unit they found no drugs or drug paraphernalia. The Tenant offered to try and call the police officer referred to by the Landlord; however, the Tenant only had the non-emergency number for the police.

The Tenant denies that there are people coming and going to the rental unit often. She testified that she works afternoons into the late evening, and will often have a friend over for coffee when she gets home but they are very quiet.

The Tenant testified they never have more than two people visiting because the rental unit is small. She testified she does not drink and that other people in the building party and make noise. She testified she has heard other people in the building slamming doors, but she is very careful when she comes home late at night, not to.

The Tenant testified that the chemical smell in the morning was from when she had been doing some pressure washing at work and when she came home her feet were sticky so she washed the entrance floor. The Tenant testified that these were not chemicals but it was Pinesol. She testified she may have mixed the Pinesol incorrectly and that might have caused a different smell. She again testified that the police have found no drugs, no smell and no drug paraphernalia when they came to the rental unit.

The Tenant testified that she does not party but she has smelled marijuana coming from other apartments in the building. The Tenant alleges that Witness 1 makes a lot of noise that disturbs her, such as banging on the floor and making other noise. The Tenant alleges that due to the noise from above they have had pictures fall off the wall onto the floor.

The Tenant testified they have done nothing wrong, it is just that the residents in the building are all friends and have a clique which the Tenants are not part of, and the other residents resent them.

In summation, the Agent for the Landlord explained that they would not want the Tenants to leave unless it was really necessary, since each time a renter leaves the Landlord loses money. The Agents testified there are too many people coming there and they are causing disturbances, and they do not want to lose other renters in the building. The Agents again alleged drug use in the rental unit and the friends and guests are too noisy.

In summation, the Tenant testified there are not too many people in the rental unit and they seldom have more than three people there. The Tenant explained the chemical smell was from cleaners and the Tenants feel they are being picked on by the Landlord. The Tenant testified that she understood the police had called the Agent for the Landlord and explained they found no drugs or smell coming from the rental unit.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find and I am satisfied that the Tenants or persons permitted on the residential property by the Tenants, have significantly interfered with and unreasonably disturbed other occupants of the residential property.

I accept the testimony of the Agents and the Witnesses that there are many people coming and going at all hours of the night and day, and they are using the buzzer late at night and at least one has pounded on windows to gain entrance to the rental unit. I find that there is a preponderance of evidence that there is constant traffic to and from the rental unit, and related noise, which has disturbed other occupants of the building.

Furthermore, while I am unable to make a finding on what type of chemical smell is coming from the rental unit, I accept that the smell is not an easily recognized cleaner or other similar product, and that the smell, whatever it is, is disturbing other occupants of the building to the extent they are calling the police about it. Whatever the cause of the smell is, I accept it is coming from the rental unit and it is disturbing to other people, based on the preponderance of evidence.

I also find and I am satisfied that it would be unreasonable and unfair to the Landlord or the other occupants to wait for the Notice to End Tenancy under section 47 to take effect.

Therefore, pursuant to section 56 of the Act, I grant the Landlord an order of possession for the rental unit **effective two days after service upon the Tenants**, and I grant and issue the order in this form. This order may be enforced through the British Columbia Supreme Court.

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 Act.

Dated: April 29, 2014

Residential Tenancy Branch

