



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the tenant to cancel a notice to end tenancy for cause. The tenant, an agent for the landlord, and two witnesses for the landlord and one for the tenant participated in the teleconference hearing.

The tenant did not submit any documentary evidence. The tenant acknowledged receiving the evidence of the landlord. 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.

It must be noted, and it is part of the document evidence, that these same parties were before a hearing conducted March 21, 2014, at which time the landlord determined to withdraw their Notice with proviso that if the issues leading to the Notice continued they would document the issues and serve a new Notice to End. It must further be noted the Decision of the previous hearing addressed the landlord's right to serve a new Notice inclusive of events on which a previous Notice was based.

The parties were provided opportunity to settle their dispute, however this matter proceeded on the relevant merits of the application and the evidence advanced. In the hearing, the landlord orally requested an Order of possession effective as soon as possible.

Issue(s) to be Decided

Is the notice to end tenancy dated April 25, 2014 valid?

Background and Evidence

On February 16, 2014 and again on April 25, 2014 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The notice indicates that the reasons for ending the tenancy are as follows: (1) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and, (2) 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.

Landlord's Evidence

The landlord stated that since the outset of the tenancy in May 2013, the tenant has caused unreasonable noise disturbances significantly impacting some tenant but primarily the tenant

below the applicant. The landlord has received numerous written and verbal complaints about the tenant engaging in conduct after 11:00 p.m. and throughout the night hours: traversing in and out of the building “all hours of the night”, and during the night, (during the same hours) loudly “clomping” up and down the stairs and hallways, speaking loudly, slamming doors, including common doors, walking and often stomping in shoes on hardwood floors during the night – back and forth throughout their unit, clattering dishes during the night, various cars awaiting the tenant outside, honking their horns for the tenant with the tenant then attending to the cars, and, dropping heavy objects in the early a.m.

The landlord provided a series of e-mail communications from the tenant below the applicant and a neighbouring tenant of the applicant originating from before the last hearing and up to the end of May 2014, as well as a warning letter dated 3 days after the last hearing as well as a warning letter dated June 10, 2014, addressing the continued disruption and noise emanating from the applicant’s rental unit.

The landlord also provided **2 witnesses**: occupants of the suite below the applicants to this matter, whom individually testified of the excessive amount of noise during the night hours after 11:00 p.m. and that the noise has been experienced since May 2013 when the tenant first moved in. The witnesses testified they have been tenants for almost 10 years and that they used to live on a typically quiet street until the applicants moved in. However, they now experience intrusive noise from the unit above them and ongoing conduct of the female applicant late in the evening and into the night as they slam doors, stomp up and down stairs and hardwood floors going to awaiting cars multiple times in the night. The witnesses see the cars and hear them honking – to which the applicant female responds by stomping out the building and attending to them while speaking loudly just outside the witnesses’ unit. The witnesses testified they have spoken to the applicants many times and alerted them to the problems – and they also attended the former hearing to state their complaints. They have also called Police numerous times, and have attempted to address the ongoing conduct and issues through Community Police members, to no definitive resolve. The witnesses are frustrated as living below the applicant tenants they take the brunt of the problems described and continually lose sleep or are awakened during the night by the excessive noise of the applicant tenant.

Tenant’s Response

The applicant tenant denied all the allegations of the landlord and denied they engage in any activity during the night. However, they acknowledged that the Police attended their unit on one occasion 6 months ago, as she was purported to be knocking on the bedroom window of the landlord’s witnesses’ unit - but did not provide details. The applicant tenant also acknowledged they have many acquaintances or friends with cars and 3 acquaintances with cars, in particular, will visit in the later hours.

The applicant tenant provided **1 witness**; the occupant of the suite above them. They testified the applicant tenants are “peaceful people”, and that the landlord’s witnesses provided testimony which was “nothing but lies”, and that they routinely manipulate information. The witness did not provide any response to the landlord’s evidence that the tenant unreasonably disturbs other occupants in the building.

Analysis

I am concerned that despite the history of this tenancy and the parties having gone through the process of a similar hearing on March 21, 2014 that the tenancy would endure a written warning from the landlord only 3 days later; and, that following that written warning, complaints culminated to the point the landlord issued another Notice to End 5 weeks later. In their response to the landlord's evidence and reasons for wanting to, again, end the tenancy, the applicant tenants, effectively confirmed some of the landlord's evidence and provided little evidence other than to deny all of the landlord's assertions. While I find that all of the witnesses were forthright, I did not find the tenant's witness focused or helpful in supporting the applicant's position they are not the source of a problem to other occupants of the building. I found both of the landlord's witnesses presented clear, credible testimony, and the applicant tenant was offered an opportunity to ask questions of these witnesses or otherwise respond to their evidence. On preponderance of all the evidence, and on balance of probabilities, I find that the landlord has sufficiently met their burden of proof. I find that I prefer the evidence of the landlord over that of the tenant. I find that the Notice to End Tenancy is valid on the basis that the tenant has unreasonably disturbed other occupants. The landlord orally requested an Order of Possession in the hearing, and having upheld the landlord's Notice I accordingly must grant an Order of Possession.

Conclusion

The tenant's application **is dismissed**, without leave to reapply.

As the effective date of the landlord's Notice to End has passed, **I grant** the landlord an Order of Possession **effective 2 days from the day it is served on the tenant**. The tenant must be served with the Order of Possession. The landlord has discretion as to when they serve the Order. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 18, 2014

Residential Tenancy Branch

