



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKEENA KALUM HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a Notice to End Tenancy issued for alleged cause.

Both parties appeared at the hearing and the Tenant was assisted by an Advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties 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.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

Pursuant to the rules of procedure, the Agent for the Landlord proceeded first to describe the Notice to End Tenancy served on the Tenant.

In this case the Landlord served the Tenant a one month Notice to End Tenancy for cause, by posting on the door of the rental unit on June 12, 2014, and this had an effective end date to the tenancy of July 31, 2014 (the "Notice"). The Notice indicates the cause alleged is that the Tenant, or a person permitted on the residential property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Agent for the Landlord testified that the Tenant or persons allowed on the property by the Tenant, consume marijuana on the balcony of the rental unit and have created

noise disturbances during the day time and night time hours. The Landlord has provided numerous warning letters to the Tenant and copies of these are provided in evidence, as well as some of the complaint forms completed by the complaining occupant.

The letters warning the Tenant are dated January 3, 2011; June 9, 2011; July 27, 2011; August 15, 2011; November 13, 2012; May 24, 2013; June 14, 2013; January 13, 2014; January 21, 2014; March 14, 2014; April 14, 2014; and July 18, 2014. I note the last warning letter was sent to the Tenant after the Notice was served on her.

The warning letters explain that there are noise complaints about the Tenant and her children. The Agent for the Landlord testified that it appears the Tenant's children are causing these disturbances when the Tenant is away. The complaints are generally about noise coming from the rental unit or the balcony of the rental unit and are concerned about noise from music and loud talking, during day time and late in the night.

The warning letters and complaints also allege the Tenant or persons allowed on the property by the Tenant, smoking marijuana on the balcony, and this smoke also disturbs at least one neighbour.

The warning letters and complaints also include the daughter of the Tenant, or another person allowed on the property by the Tenant, being on the roof of the building without authority to do so on two occasions. On one of these instances the RCMP were called. The Tenant claimed it was her who called the police because she heard someone on the roof and she did not know who it was.

The Tenant testified that all the complaints had just come from one other renter and that is her neighbour. She alleges that no other renters have complained about the noise. The Tenant further alleges that some of the complaints involve noise and smoke coming from other rental units. She alleges that many other people in the building smoke marijuana and party, and they disturb other renters too.

The Tenant testified that she does not smoke marijuana and is a quiet person. She explained it is her children who make a lot of the noise but these are everyday living noises and they have a right to live in the rental property too. She testified that since her and the father of the children ended their relationship, that she has had a hard time getting the children to behave. She explained the children are just behaving as normal teenagers; they are rebelling against their parents and have a hard time with respect and listening to their parents.

The Advocate stated that there has to be a balance between the Tenant and the neighbour next door. The Advocate argued that the Tenant's children had a right to be there and live their lives.

In reply, the Agent for the Landlord testified that two other occupants have made complaints about the Tenant but are afraid to come forward or have their name used in these proceedings.

The Agent agreed there had been an instance on June 10, 2014, where another renter, living in a different rental unit across the yard from the Tenant, had been making the noise although this Tenant was initially blamed.

In further reply, the Tenant explained that each time she got a warning letter from the Landlord she went to the Agent for the Landlord and apologized and explained she was not there and it was her children making the noise or causing the problem.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has insufficient evidence to prove the Notice should be cancelled.

Based on the number of noise complaints, the testimony of both parties and on the evidence from the 12 warning letters, I find that the Notice is valid, as the Tenant or a person permitted on the residential property by the Tenant, has significantly interfered with or unreasonably disturbed at least one other occupant. Section 47 (1) (d) of the Act does not require multiple occupants to complain about the disturbances.

When complaints do come from just one other occupant there is a potential that there is simply a personal grievance between the parties and there may be an ulterior motive for someone to make complaints to a property owner.

While the complaints in this instance do come from one other renter, there was no evidence from the Tenant to show this occupant and the Tenant had any personal involvement which would indicate an ulterior motive of the other occupant. It appeared from the complaint letters from the occupant and the warning letters from the Landlord that this was not a "personal" issue against the Tenant, but rather, these are legitimate complaints being made about ongoing and repeated noise and other disturbances.

Having made the above findings, I find the Notice is valid and I must dismiss the Tenant's Application without leave to reapply. As the effective date of the Notice was July 31, 2014, I find the tenancy has now ended.

However, at the conclusion of the hearing the parties explained that the Tenant is not currently living in the rental unit, as there was a fire in the building and several units needed cleaning for smoke damage. All of the property of the Tenant is currently being kept in a storage container paid for by the Landlord.

The Agent for the Landlord, and the Tenant and her Advocate agreed the Tenant would remove her property from the storage container before 2:00 p.m. on Friday August 22, 2014.

Lastly, I note the Tenant did not pay any rent for August 2014, due to the smoke damage situation, and the Tenant acknowledged she understood the tenancy had ended.

Conclusion

The Tenant's Application for Dispute Resolution to cancel a Notice to End Tenancy for cause is dismissed without leave. I find the Notice for cause was valid and the Landlord supported the Notice with evidence and the testimony of their Agent.

As explained above, the Tenant is not currently in the rental unit and has agreed to remove her property from the storage container provided by the Landlord before 2:00 p.m. August 22, 2014.

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: August 18, 2014

Residential Tenancy Branch

