



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAREB HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated September 22, 2014.

Both parties were present at the hearing and the tenant, who is deaf, was assisted by an interpreter and an advocate. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

Issue(s) To Be Determined

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

Background and Evidence

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated September 22, 2014 indicating that the tenancy is being terminated by the landlord because the tenant had:

- significantly interfered with and or unreasonably disturbed other occupants or the landlord or;
- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord.
- 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.

Also in evidence were copies of statements, communications, a copy of the tenancy agreement and proof of service. The evidence included copies of letters of complaint and warnings dated before and after September 22, 2014, which is the date that the 1-Month Notice to End Tenancy was issued.

The landlord testified that although the tenancy was to begin on June 1, 2013, the tenant moved in early and the first warning letter was issued on May 13, 2013 regarding noise and other unacceptable conduct reported to the landlord by other residents.

The landlord testified that a second warning letter was sent to the tenant on May 23 cautioning her about knocking on the door of another resident to ask for help with her phone and also some other concerns.

The landlord testified that on November 26, 2013, they received a written complaint from another renter about a disturbing incident in which the tenant came to his door repeatedly demanding that he sell her some drugs and becoming aggressive when he refused. The letter asked the landlord to ensure that the tenant does not come to his door again. The landlord testified that they then issued a caution letter to the tenant on November 27, 2013 about this conduct.

A copy of a letter from the landlord dated January 29, 2014 was submitted cautioning the tenant about various issues of concern including overloading the circuits and allowing a visitor's dog to run free. The letter also emphasized that, regardless of her disability, the tenant should not be disrespectful and rude to other people.

The landlord referred to a letter dated May 5, 2014, in which a neighbouring resident complained about noise created by the tenant and the fact that the tenant continues to bother others when they are gathered outside smoking by asking them to give her cigarettes and becoming hostile if they decline.

On May 6, 2014, the landlord sent the tenant a letter cautioning her to be respectful to others and *"not be a pest to your neighbours"*

On July 22, 2014 the landlord wrote to the tenant about a complaint and reminding her not to make excessive noise afterhours.

The landlord testified that the "last straw" occurred on Friday September 19, 2014 when the tenant apparently took offense that some other residents failed to respond to her knocks on their doors. When the tenant saw them, she physically confronted these residents in a fury, verbally abusing them and throwing things.

The landlord submitted a copy of a letter into evidence, that they received on September 19, 2014, signed by 19 other residents. The letter stated that they have all

endured negative and upsetting experiences involving the tenant including displays of anger, profanity and intrusive conduct such as bothering people by knocking on their door or approaching them without invitation.

The landlord's witness stated that, on September 19, 2014, he and others had been out for the morning and returned to the complex around lunch time. According to the witness, that while they were outside the tenant came out in an agitated state to confront them and began to scold them for not answering their doors when she knocked that morning. The witness stated that the tenant threw items including a chair.

The landlord stated that because of this, they felt it necessary to issue a 1-Month Notice to End Tenancy for Cause.

The landlord stated that the tenant's negative and intrusive conduct escalated after the Notice was issued and several more complaints have since been received.

The tenant testified that the allegations made by the landlord and others are not accurate. In regard to the alleged noise complaints, the tenant pointed out that she is deaf and is sometimes not aware of the noise level. The tenant testified that she does not wear heavy shoes nor clomp on the floor, but uses a walker which may be responsible for the sounds reported.

In regard to the landlord's testimony that the tenant had been approaching others to borrow things, the tenant acknowledged that she has borrowed items from other residents on occasion but has also loaned items to those who asked her as well.

The tenant denied that she had used profanity or made any threatening gestures. The tenant testified that many times people may misinterpret her gestures because of the physical way she is forced to communicate due to being deaf.

The tenant acknowledged that she did knock on the door of a resident who she suspected was involved in drugs to ask him whether he was selling drugs and she only returned to his door a second time to offer him money as a tactic to prove that he truly is a drug dealer. The tenant stated that it was never her intent to demand or purchase drugs for her own use. The tenant pointed out that she never attempted to contact this individual again.

In explaining the incident that occurred on September 19, 2014, the tenant explained that she was upset because her friends had not responded to her knocks on their doors. The tenant stated that she was frustrated, but did not actually throw the chair, she merely set it down firmly. The tenant stated that she never threw an ashtray at anyone.

Analysis – Notice to End Tenancy

In determining if the Notice should be cancelled, it is necessary to establish whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47 of the Act.

The Residential Tenancy Guideline gives examples of what may constitute “significant Interference”, including examples of:

- unreasonable and ongoing noise;
- persecution and intimidation;
- engaging in destructive or violent behaviour

In regards to the term, “unreasonably disturbed”, Black’s Law Dictionary defines “unreasonable” as:

“Irrational; foolish; unwise; absurd; preposterous; senseless;...
immoderate; exorbitant; ...capricious; arbitrary; confiscatory.”

In this instance I find that the allegations against the tenant for excessive noise were not sufficiently proven to be an unreasonable disturbance as the noise though clearly audible, may or may not have been at a level that would be considered unreasonable.

However, in regard to the complaints about the tenant’s interactions with other residents, I find on a balance of probabilities that the tenant had repeatedly engaged in conduct that other residents found to be disruptive and this was communicated to the tenant.

I find that the landlord received numerous ongoing complaints about the tenant’s interference and disturbing behaviour towards other residents and warned the tenant in writing more than once to cease this conduct.

I accept the landlord’s and witness’ evidence that there was no misunderstanding on the part of the landlord and other residents about whether the tenant’s demeanor was hostile or threatening.

I find that, despite the warnings and the clear indication that if the tenant refused to stop bothering others, the tenancy would be ended, the tenant still persisted in engaging in the offensive conduct.

Given the above, I find that the Tenant’s Application requesting that the Notice be cancelled is not supported under the Act by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The Tenant must be served with the order of possession. 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.

Conclusion

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application without leave. I hereby grant the landlord an Order of Possession effective Sunday, November 30, 2014 at 1:00 p.m.

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: November 17, 2014

Residential Tenancy Branch

