



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

At the hearing the landlord's agent (the agent) made an oral request for an order of possession in the event that I dismissed the tenant's application.

The agent admitted service of the dispute resolution package and the tenant's supplemental evidence. The agent did not take any position with respect to the admission of the tenant's late filed evidence. On the basis of the agent's position, I accept that the landlord was served with the dispute resolution package and evidence pursuant to sections 88 and 89 of the Act.

The landlord served its evidence package to the tenant on 1 December 2014. The sister signed a receipt admitting service of these documents. The tenant did not dispute receiving these documents. On the basis of this evidence, I accept that the tenant has been served with the landlord's evidence pursuant to section 88 of the Act.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 8 July 2013. The landlord and tenant signed a written tenancy agreement on 5 July 2013. The tenant is the only occupant listed in the agreement. Monthly rent of \$575.00 is payable on the first. On 12 June 2013, the landlord collected a security deposit of \$287.50. The tenancy agreement contains a clause that prohibits additional occupants.

On 7 September 2014, the sister began to reside at the rental unit. The tenant testified that she told the agent that the tenant's sister would be staying with the tenant for two to three months. The agent testified that this conversation occurred in passing and that all she understood was that the sister would be visiting. No written consent was obtained from the landlord.

The sister testified that the tenant obtained a second key to the building from the agent approximately 1.5 weeks after she moved in. The tenant testified that she did not understand that there was any potential issue with her sister's occupancy.

On 22 September 2014, the landlord served the tenant with a breach letter and incident report. The incident report set out that on 22 September 2014 at 1845 a guest of the tenant was involved in a screaming and shoving altercation on the parking lot for the building. More than one call was made by occupants of the residential building to the police. Calls were also placed to the agent by occupants of the residential building.

After the altercation, the guest was permitted to enter the building and the rental unit by the sister. The tenant testified that neither she nor her sister knew of the altercation at the time the guest entered the property.

A second incident report was created in respect of an altercation that occurred on 18 October 2014. On 18 October 2014, the agent observed the same guest from the 22 October 2014 incident scream and yell at a man with a dog. The guest was standing in the parking lot of the building. After this altercation, the agent observed the guest being admitted entry into the building and to the rental unit. There was some confusion as to whether this was the same guest or a different guest in the agent's and tenant's testimonies. The tenant testified that it was a niece who was involved in the first incident and a granddaughter who that was involved in the second incident. The tenant testified that the granddaughter is a child. The agent testified that the niece is in her late twenties. The agent testified that she can tell the niece and the granddaughter apart.

The tenant and sister both testified that they did not know the guest was coming to the rental unit in advance of her arrival. The tenant testified that she has banned the granddaughter from the residential property and that she limits her family visitors to one at a time.

On 24 October 2014, the agent, tenant and sister met.

On 26 October 2014, the landlord served a letter to the tenant stating that the tenant was in breach of clause 13 of the tenancy agreement. The tenant and the sister were told that the sister was expected to apply to be added to an amended tenancy agreement and, that if this application was denied, the sister was expected to vacate the rental unit by 30 October 2014.

On 28 October 2014, the sister's application was rejected. The application was rejected because of the sister's credit history. The rejection was relayed to the tenant by telephone.

On 30 October 2014, the tenant and sister delivered a letter to the agent stating that the sister would not be vacating the rental unit. The letter set out in part:

It has come to my attention that you did not act on the 14 days to provide [the sister] or [the tenant] within the time frame to add me as an additional occupant to the lease under the Residential Tenancy Act.

The agent advised the sister and tenant that the next step would be service of a 1 Month Notice.

On 31 October 2014, the landlord served the tenant with the 1 Month Notice by hand delivering it to the sister. The tenant did not dispute this service. The 1 Month Notice set out an effective date of 30 November 2014. The 1 Month Notice set out that it was being issued because:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant provided a submission letter. In that letter the tenant asserts that she told the agent that the sister would be staying with the tenant for a few months. The tenant testified that she did not ever consider the tenancy agreement in relation to her sister's occupancy.

The agent testified that most residents of the building let her know in advance if people will be visiting as a courtesy. The agent testified that two or three tenants have requested that family members be permitted to be added to the tenancy agreement. One has gone through the process and was approved.

The tenant does not have any rental arrears.

Analysis

Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Paragraph 47(1)(h) of the Act sets out that a landlord may end a tenancy where the tenant has failed to comply with a material term and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I will first consider the landlord's allegation that the tenant or person permitted on the residential property significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

"Residential property" is a defined term under the Act:

"residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure on the parcel or parcels;

Both the 22 September 2014 and 18 October 2014 incidents occurred on the parking lot for the building. I find that for the purpose of this section, these acts occurred within the parcel on which the building is located. This means that the incidents occurred on the residential property within the meaning of the Act.

"Permit" (the present tense of "permitted") is defined in Black's Law Dictionary as:

To suffer, allow, consent, let; to give leave or licence; to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act.

In this case the tenant failed to prevent the guest from entering onto the residential property on each occasion. The tenant was told of the incident on 22 September 2014 when the landlord delivered the breach letter to her. The tenant did not take steps to prevent the guest from returning to the residential property. The tenant permitted the guest to be on the residential property by her acquiescence or failure to prevent the guest from attending at the residential property. Accordingly, I find that the tenant permitted the guest on the residential property.

It then remains to be determined whether or not the guest unreasonably disturbed another occupant or landlord. I find that the same guest was involved in both altercations. Each incident involved arguments, either verbal or physical, that resulted in multiple calls by multiple residents to the agent of the building. The first incident even involved multiple calls to the police. I find, on a balance of probabilities, that the guest unreasonably disturbed other occupants of the building.

As the landlord has substantiated the 1 Month Notice on the basis of subparagraph 47(1)(d)(i), I need not consider the alternate reason proposed under paragraph 47(1)(h).

The tenant's application is dismissed. The 1 Month Notice is valid. The landlord is entitled to an order of possession. As the tenant has paid December's rent, the landlord is entitled to an order of possession for one o'clock in the afternoon on 31 December 2014.

Conclusion

The tenant's application is dismissed. The 1 Month Notice is valid.

Where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenant's application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession. This order of possession is effective at one o'clock in the afternoon on 31 December 2014. This order may be served on the tenant(s), filed with the Supreme Court of British Columbia and 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 subsection 9.1(1) of the *Residential Tenancy Act*.

Dated: December 18, 2014

Residential Tenancy Branch

