



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JABS CONSTRUCTION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC OLC

Preliminary Issues

Section 66(1) of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

In this case the Tenant was required to file her application for Dispute Resolution to dispute the 1 Month Notice within ten days of receiving that Notice. The Tenant received the 1 Month Notice on October 28, 2014 and filed her first application on November 4, 2014, within the required timeframes, and expected to receive the hearing documents in the mail. The application was received and processed by the Residential Tenancy Branch (RTB); however the Tenant had neglected to provide a telephone number so the RTB held onto the hearing documents rather than mailing them. Copies of the November 4, 2014 application and file number were provided in the Tenants' documentary evidence.

The Tenant submitted documentary evidence that when she did not receive the hearing documents from her first application, she filed a second application on November 24, 2014 to dispute the Notice, and that is when she found out she was required to provide a telephone number.

The RTB record confirms the list of events as described by the Tenant. Based on the foregoing, and in consideration that the Tenant's first application had been accepted without any indication to her that it was missing her telephone number, I find there were exceptional circumstances that prevented the Tenant's application to be finalized within the required timeframes, and I granted the extension for more time and allowed this application to proceed.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on November 25, 2014, to cancel a 1 Month Notice to end tenancy issued for cause and to Order the Landlord to comply with the Act, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Agent, (Agent) and the Tenant. Each party gave affirmed testimony and confirmed that there was no one else in attendance at this hearing. The parties confirmed receipt of evidence served by the other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice issued October 28, 2014 be cancelled or upheld?
2. Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?
3. If the 1 Month Notice is upheld, did the Landlord make an oral request for an Order of Possession?

Background and Evidence

The undisputed evidence was that the parties executed a written tenancy agreement for a month to month tenancy that commenced on January 1, 2011. The Tenant is required to pay the current rent of \$820.00 on the first of each month and on December 20, 2010 the Tenant paid \$402.50 as the security deposit.

The Landlord submitted documentary evidence which included among other things, copies of: the tenancy agreement; a 1 Month Notice issued October 28, 2014; three complaints from other tenants; a written statement from a tenant; a receipt for December payment being accepted for use and occupancy; and their written summary of facts.

The Landlord and Agent testified that during the last couple months they have been receiving numerous complaints from other tenants regarding yelling, screaming, noises, and fighting coming from this Tenant's rental unit. The submissions indicate that the noise is happening at all hours of the evening and recently the loud noise and fighting is happening between the hours of 3:00 a.m. and 5:00 a.m. which causes other tenants to be disturbed while they are trying to sleep.

The Agent submitted that he has issued the Tenant several verbal warnings and written notes that he slipped under her door but did not keep copies of those notes. He stated that the last verbal warning was issued on October 26th or October 27, 2014 when he told the Tenant that it was her last warning and if she did not keep the noise level down she would be issued a 30 day eviction. He said that the Tenant responded to his last

warning by telling the Agent not to worry because if it happened again she would just kick out her roommate.

The Agent stated that the Tenant's male friend is always at the rental unit and he suspects that he is residing in the unit with the Tenant. He said that they have also had incidents with the Tenant's guests coming and going numerous times throughout the day and evening and one guest caused problems when he attempted to bring his bike inside the rental building.

The Landlord and Agent argued that they have already had one tenant move out due to these circumstances with this Tenant and they now have other tenants who have indicated that they will be moving if this eviction is canceled.

The Landlord stated that when the noise continued he received a request from the Agent to issue the Tenant an eviction notice. The 1 Month Notice was issued pursuant to Section 47(1) of the Act on October 28, 2014, for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

In response to the Landlord's and Agent's submissions the Tenant testified and confirmed that she has received three verbal warnings from the Agent. She argued that she had never received written warnings. She indicated that she did not consider verbal warnings as seriously as she would consider written warnings. The Tenant confirmed that the Agent told her that it was her last warning and that if noise continued she would be given a 30 day eviction.

The Tenant argued that her male friend does not live with her and she never called him her roommate. She argued that she was not aware of an altercation that occurred with one of her guests until now. The Tenant then admitted that there have been a couple of times when she had gotten into arguments with her male friend and explained those arguments as being the result of a language barrier. She went on to explain other incidents of yelling and specifically one incident where she was being strangled and she was yelling out for help but no one called the police to assist her.

Immediately following her description about being strangled I heard a male voice in the room with her. I asked the Tenant if someone was with her and she stated that it was the television that I had heard. I explained to the Tenant that it was not the television I heard and that it was okay if someone was with her or if someone was assisting her; she just needed to tell me if that was the case. The Tenant then disconnected from the hearing, which was at 9:30 a.m.

The Landlord indicated his concern for the Tenant's safety and stated that he would be calling the authorities immediately following this proceeding. Prior to the conclusion of

the hearing the Landlord and Agent requested an Order of Possession effective for as soon as possible.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 28 of the Act provides that all tenants are entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; and use of common areas for reasonable and lawful purposes, free from significant interference.

Notwithstanding the Tenant's arguments that there were no written notices or written warning letters issued to her, the undisputed evidence was that the Tenant had been involved in disturbances, yelling, and physical disputes which disrupted other tenant's quiet enjoyment at all hours of the night. The Tenant had been issued several verbal warnings and one final warning that she would be evicted if the noise or fighting continued and the Agent followed through with his warnings and did issue the Tenant a 30 day eviction notice.

Despite the Agent's efforts, I find it is the Tenant and her guest's behaviour that has created the current situation, which has continued even after the 1 Month Notice has been issued; which I find continues to be a breach of section 28 of the Act, as listed above.

Based on the above, I find the Landlord provided sufficient evidence to uphold the 1 Month Notice, pursuant to sections 47(1)(d)(i) of the Act, on the grounds that the Tenant has, and continues to, significantly interfere with or unreasonably disturb another occupant or the landlord. Accordingly, I dismiss the Tenant's request to cancel the 1 Month Notice issued October 28, 2014, and her request to order the Landlord to comply with the Act, regulation, or tenancy agreement.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

The Landlord and Agent attended this hearing and made an oral request that they be issued an Order of Possession effective as soon as possible. The evidence supports that the Landlord accepted payment for use and occupancy for the entire month of December, 2014; therefore, I grant the Landlord an Order of Possession effective December 31, 2014.

Conclusion

I HEREBY DISMISS the Tenant's application to cancel the 1 Month Notice and obtain an Order of Possession, without leave to reapply.

The Landlord has been issued an Order of Possession effective **December 31, 2014, after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 19, 2014

Residential Tenancy Branch

