



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FF

Introduction

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) to cancel a Notice to End tenancy for Cause dated September 01, 2014. The tenant, the landlord and three witnesses for the landlord participated in the teleconference hearing.

The tenant did not submit any documentary evidence. The landlord testified they served all of their evidence of 20 pages to the tenant. The tenant acknowledged receiving the landlord's document evidence 1 day later than prescribed by the Rules of Procedure but that they had reviewed and understood the evidence, although they sought more time to "validate" the evidence and confirm its origin. I found that despite the tenant receiving the evidence 1 day late the tenant had sufficient knowledge of the evidence and they were not unreasonably prevented from addressing it or responding to it in the hearing.

I have reviewed all evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision. During 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 valid?

Background and Evidence

Both parties provided sworn / affirmed testimony. The dispute address is the lower rental unit of the residential property. On September 01, 2014 the landlord served the tenant with a 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 testified that since June 2014 they began to receive complaints from the other occupants of the building – of cigarette smoke and marijuana smoke emanating from the subject unit, unruly parties with loud swearing, excessive consumption of liquor and incidents of shooting 'BB' guns at beer cans on the residential property, as well as loud drum playing into the early a.m. The landlord testified in respect to a particular "drunken party" in the first week of July 2014 with intoxicated party guests vomiting and passed out on the lawn and the lawns of adjacent neighbours. The parties discussed the matter and a less disputatious period followed which ended on August 30, 2014 when the tenant had a party with an abundance of guests, in which there was excessive drinking of liquor, loud swearing / foul language, loud music, yelling in the street and vomiting on the residential property and those of adjacent neighbours. The landlord described the party went into the early hours of the next morning. The landlord submitted written narratives from the 2 other residents of the residential property as well as written narratives from 5 additional residents of neighbouring properties.

The 2 other residents of the building and 1 neighbour appeared as sworn witnesses for the landlord. Each witness confirmed that the narratives in evidence were provided by them to the landlord and they comprise their evidence in this matter. Both building residents, RT and EP, live directly above the tenant's unit, while the neighbour, BM, resides across the alley from the dispute address.

RT testified that in June 2014 there was regular smoking of marijuana in the rental unit below them as well as periodic gatherings with loud drum playing and loud talking into the mid-morning hours of 2-3 a.m. RT submitted and testified to several parties in the first half of July 2014. In particular, RT's evidence is that on July 12, 2014 the tenant held a very loud party until 4 a.m. marked by much drinking, loud foul language, purported drinking of shooters with calls of "drink motherfucker drink", shooting 'BB' guns, and smoking of marijuana. At 1 a.m. the tenant and guests walked about the neighbourhood lying down on neighbouring lawns. RT provided that a known male party guest was seen vomiting for an hour before they walked back to the residential property lawn and continued to vomit. RT was concerned for them and brought the guest water. RT testified the guest was clearly intoxicated, although they noted that the applicant tenant did not respond to the seeming plight of their guest. The tenant claims their guest was ill ("sick") and not at all intoxicated. RT testified they spoke to the guest

the next day, who confirmed to RT they had been intoxicated and were very embarrassed over the incident.

RT testified that on August 30, 2014 the tenant had another party, which the tenant had previously announced would be respectful to other tenants: informing the upstairs tenants there would not be smoking and that the party would move indoors by 11:00 p.m. and would wrap up by 2:00 a.m. RT testified the backyard party was loud, peppered with foul language and what they described as binge drinking. Upon the party moving indoors, the music volume was turned up. RT described that the bass was extremely loud and that it shook the entire house - keeping their small children awake and crying. RT's partner and another tenant approached the respondent's unit in attempt to quell the loud noise and general disturbance. RT provided that party guests were again seen to be ill and passed out on the lawn of their neighbours with the last of the party attendees still in the back yard smoking and talking until 5:30 a.m. RT provided that since the latter incident they often experience marijuana smoke entering their unit through the heat vents which exasperates RT's asthma condition. When approached the respondent denies that anything is smoked within their unit.

EP testified respecting the party incident of August 30, 2014. Their testimony was similar to that of RT and provided that they were the *accompanying tenant* in an attempt to quell the party elements of loud bass music after the party was moved indoors. EP testified they witnessed party guests, "getting very drunk" and hearing loud swearing and repeated, "chug it motherfucker chug it". EP testified that the applicant's conduct seemed to them to be "dishonest" and disrespectful of the upstairs tenants. EP provided that they left the rental unit at approximately 12:30 a.m. as they were convinced they would not sleep if they remained in their unit. Since August 30, 2014, EP has not been aware of other parties but routinely smells cigarette and marijuana smoke entering their unit through the heating vents. The tenant claims that EP has never seen them smoke in their unit and denies it ever occurs.

BM testified respecting the party incident of August 30, 2014. BM explained they occupy the residential unit to the back of the dispute address across the alley: "kitty corner". They testified that on the evening of August 30, 2014 they could hear a loud commotion emanating from the dispute property. In the later hours they were outside and witnessed remnants of vomit all over the alley, and their fence; and, were kept awake by the loud volume of music and other noisy conduct until 3:00 a.m.

The balance of narratives submitted into evidence from other neighbours is similar and mirror the testimony and evidence of the witnesses. In particular, 2 *signed* narratives state, in part, as follows:

“ On the night of Saturday, August 30, 2014 an extremely loud, boisterous, and drunken party took place on our block. . . . We have lived in this neighbourhood for over 30 years and we have never seen this loud or disruptive a party before . . . It is particularly upsetting because there are young children and a number of seniors, some with major health conditions that were affected”.

(September 07, 2014) “ I would like to formally issue a complaint against the renter in your basement. He had a party, one week ago that woke us up with pounding music, yelling people, with quite a bit of fowl swearing, and people throwing up. This is not the first time we have been disturbed by one of his gatherings, with people throwing up on the front lawn and loud music and obscene swearing.”

Tenant’s Response

The tenant stated that the August 30, 2014 *birthday* party was an, “isolated incident”, and therefore not a basis for (eviction) ending the tenancy. The tenant provided that they notified their neighbours one week before and received their neighbour’s consent for the date, time and nature of the party. The tenant claims the party was, “as agreed by the neighbours”, and that no other disruptions have occurred since that party. They claim that the landlord’s evidence is flawed. The tenant denied there has been any smoking of any substance in the rental unit and that their neighbours have never witnessed them smoking within their unit.

Analysis

On preponderance of all the relevant evidence I have reached a Decision. In this type of matter the landlord is responsible to prove, on a balance of probabilities, that they issued the tenant a valid notice to end the tenancy for valid reasons. I find that all of the landlord’s witnesses were forthright in their presentations and consistent with one another’s observations. All of these witnesses presented clear, credible testimony, and the tenant was offered an opportunity to ask questions of these witnesses or otherwise respond to their evidence. Based on the volume of evidence presented by the landlord I do not accept the tenant’s premise the August 30, 2014 party was an “isolated incident” in this tenancy. I prefer the evidence of the landlord that August 30, 2014 effectively was a defining incident in a series of previous incidents since the start of June 2014, which negatively impacted the other tenants and the landlord, as was presented. Despite the tenant’s assertions the other tenants consented to the presence of a party on August 30, 2014, I do not accept the other tenants, by such consent, agreed to accept the issues which ultimately arose. I accept and find that the other tenants were significantly disturbed by what they heard, observed and endured on August 30, 2014.

I find the testimony of how the 2 other tenants in the residential property experienced the claimed smell and presence of cigarette smoke and marijuana smoke was complementary and reasonable. I accept, on balance of probabilities that the upstairs tenants are able to receive and perceive the smell and other evidence of cigarette smoke and marijuana smoke if originating below them, and I have not been presented evidence that the lower area of the residential property is occupied by someone other than the applicant. As a result, I prefer the evidence of the landlord over that of the tenant that in the period following August 30, 2014, the tenant smoked or allowed smoking, and smoking of marijuana, inside their unit and that it disturbs the occupants upstairs.

I find that the Notice to End tenancy is valid on the basis that the tenant has *significantly and unreasonably disturbed other occupants of the residential property*. The landlord orally requested an Order of Possession in the hearing, and in concert with Section 55 of the Act I accordingly must grant an Order of Possession.

Conclusion

The tenant's application **is dismissed** in its entirety.

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. 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: November 04, 2014

Residential Tenancy Branch