



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353178 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to section 47 of the *Residential Tenancy Act* (the “Act”) for an Order cancelling a notice to end tenancy.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

The Tenant requested an adjournment to an in-person hearing. The Tenant states that an in person hearing is required so that visuals of the Tenant are available and that an in-person hearing will be less stressful. The Landlord argues against the adjournment and states that the Tenant’s request is only a stalling tactic.

While I can appreciate that attending a hearing over a dispute will be stressful, I am not persuaded that an in-person hearing will be less stressful. Hearings are routinely held over conference calls and decisions made on evidence provided before and during a hearing. Decisions are not based on visuals of the Parties. For these reasons I do not find that the Tenant has substantiated an adjournment and I deny such an adjournment.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on November 1, 2011. Rent of \$747.00 is payable monthly on the first day of each month. On December 30, 2014 the Landlord posted a one month notice to end tenancy for cause on the door of the unit (the "Notice"). The reasons stated on the Notice are as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord; or
- 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
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The Tenant states that she has no recall when she received the Notice.

The Landlord states that the Tenant caused a disturbance in July 2014 by playing loud music, banging and being verbally aggressive towards the Landlord and other tenants. The Landlord states that the police were called and upon attending the Tenant's unit, the Tenant jumped off the second floor balcony in her underwear and disappeared. The Landlord states that the Tenant has such outbursts about every 6 months and that while the Landlord has been very tolerant, another incident occurred on December 25, 2014. On this date, from early in the morning and throughout the day the Landlord states that the Tenant turned on loud music, stomped on the floors and generally made significant noise disturbing other tenants. The Landlord provided letters from three tenants. The Landlord states that these tenants had been very reluctant to provide witness letters but did so after encouragement by the police who attended the unit that day. The Landlord states that the police also asked the Landlord why nothing had been done about the Tenant's disturbances. The Landlord states that tenants have indicated that they will end their tenancy if the Tenant does not move out of the unit.

The Tenant states that while she did jump off the balcony in a bathing suit in July 2014 and was playing loud music she had not disturbed anybody. The Tenant states that she was very distraught on December 25, 2014 and had a breakdown. The Tenant states that she has since apologized to her neighbours, that she is otherwise a quiet tenant that does not cause any problems and that she has started counselling. The Tenant states that while she has been looking for another place to live she has mobility challenges and has not been able to find a new rental. The Tenant's advocate states that the advocate's organization is involved in assisting the Tenant with locating new housing and needs more time.

The Landlord states that he has no evidence of any illegal activity other than disturbing people and is not aware of any charges against the Tenant for any activity at the unit.

After taking the above evidence each Party was given an opportunity to make final comments or ask questions. I note that the Landlord had no further questions or comments.

Analysis

Section 53 of the Act provides that where a landlord gives notice to end a tenancy effective on an incorrect date, the notice is deemed to be changed to the earliest date that complies with the Act. Section 90 of the Act provides that where a document that is served by posting the document on the door, the document is deemed to be received three days after it was posted. Based on the Landlord's evidence that the Notice was posted on the door and considering that the Tenant could not recall when she received the Notice, I find that the Tenant received the Notice on January 3, 2015. As the Tenant pays rent on the first of each month, I find that the effective date as stated on the Notice is not in accordance with the date the Tenant received the notice and the effective date of the Notice is automatically corrected to February 28, 2015.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or

reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. I consider the Landlord's evidence, particularly the witness letters from other tenants, to be substantial in relation to the incidents that occurred in December 2014. While I accept that the Tenant was significantly upset during these incidents, I do not find that this alleviates the disturbances caused to others.

Although the Tenant denies that the incident in July 2014 was significant and that there have not been similar incidents every six months, the evidence contained in the Landlord's witness letter supports the Landlord's evidence that other tenants will leave if the situation is not corrected. A review of those letters tends to support the Landlord's evidence that such incidents are indeed occurring on a regular basis. For these reasons I find that the Landlord has substantiated on a balance of probabilities that the Tenant unreasonably disturbed another occupant or the Landlord. I find therefore that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. The Tenant's application is dismissed.

Conclusion

The Tenant's application is dismissed.

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: January 29, 2015

Residential Tenancy Branch

