



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC

Introduction:

This was an application by the tenant to cancel a Notice to End the Tenancy for cause dated January 28, 2015 to be effective February 28, 2015. Both parties were present at the hearing.

SERVICE:

I find that the Notice to End a Residential Tenancy was served by posting it on the door. The landlord admitted service of the application for dispute resolution.

Issues: Is the tenant entitled to any relief?

Preliminary Issues: Amendment: The landlord requested that the Decision and Order be amended to show the legal name of the landlord. The amendment was granted.

Timing: The landlord said the tenant was out of time to file this Application. I find the Notice to End Tenancy is deemed to be served on January 31, 2015 (posted on January 28, 2015) and this Application was filed on February 11, 2015; I find the tenant was within the 10 days permitted to file as for the calculation of days in the Rules of Procedure, the first day is excluded.

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on January 1, 2014; the current rent is \$1,300.00. The tenant paid a security deposit amounting to \$ 650.00. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) 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 put the landlord's property at significant risk;
- b) The tenant or a person permitted on the property by the tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord and jeopardizes a lawful right or interest of another occupant or the landlord.

The landlord provided evidence of activities that were occurring on the premises that were significantly disturbing neighbours. She said there was traffic to and from the premises from early in the morning to late at night, there was ongoing noise and unreasonable garbage accumulation resulting in Bylaw violation notices. Breach letters had been issued to the tenant. She said that in January, for example, nine police officers and a K-9 dog unit had attended the premises and one former occupant had informed them that there was drug activity. She said the Police attendance on the property several times, the traffic, the noise and garbage significantly interfered with the peaceful enjoyment of the neighbours and they request an Order of Possession if the tenant is unsuccessful today.

The tenant said it is only neighbours complain, not occupants of the property and the neighbours are friends of the landlord. She said her son is a drummer and he had a band but they played in another padded building on the property and stopped last October when there were complaints. She said he has now vacated. Another occupant gave her considerable problems when he over medicated and she had to call the Police twice to deal with him and he is now in a Transition house. She said she is an older lady who does not cause problems herself. The landlord pointed out that section 47 of the Act states that the landlord is responsible for the behaviour of persons she permits on the property whether they are guests or visitors. She said they are not friends of neighbours as they are a management company. She said they had given the tenant warnings and opportunities and now the landlord thought they had to exercise their rights under section 47; she pointed to the recent incident in January 2015 with nine Police persons and the dog as an illustration of how disturbing this is to neighbours.

In evidence are statements of the parties, letters and a petition signed by the neighbours, Bylaw enforcement letters concerning noise, a Breach letter, the Notice to End Tenancy, the tenancy agreement and photographs illustrating garbage accumulation.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The Act permits a tenant to dispute the Notice and the tenant has done that. The landlord has the onus of proving on a balance of probabilities that they have good cause to end the tenancy. I find the landlord has satisfied the onus as the preponderance of the evidence is that the tenant and/or persons permitted on the property by her have significantly disturbed and unreasonably interfered with the peaceful enjoyment of other occupants (in this case the neighbours).

The tenant made the point that she does not disturb anyone as she is an elderly lady but I note she stated one of her occupants had significantly disturbed her, especially when she thought he had over medicated, and she had complaints from the neighbours

in the past about the band practising in the outer building. I find insufficient evidence to support her allegation that the neighbours are friends or unduly influenced by the landlord. I find the evidence that many police officers and a dog had to attend her property again in January indicates that persons permitted on the property by her are significantly and unreasonably disturbing the peaceful enjoyment of neighbours and the activities of her guests are putting the landlord's property at significant risk.

I find the tenant's evidence that her disturbed occupant was wielding a knife and threatening and he was overmedicating and he eventually had to be housed elsewhere by authorities is persuasive evidence also of unreasonable disturbance and illegal activity that puts the landlord's property at significant risk and jeopardizes the lawful rights or interests of neighbours and adversely affects their safety, security and well being. I dismiss the application of the tenant to set aside the Notice. I find the tenancy ended on February 28, 2015.

Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 47 and has upheld the Notice. The landlord has made this request at the hearing and agreed that they would permit the tenant to stay until midnight on March 31, 2015. As a result I grant the landlord an Order for Possession.

Conclusion:

I grant the landlord an Order for Possession effective midnight March 31, 2015. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application; no filing fee was involved.

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: March 10, 2015

Residential Tenancy Branch

