



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
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 19, 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 personally on January 19, 2015. The tenant filed his Application on February 16, 2015 which I find is 18 days too late. I find he understood he had 10 days to file for he acknowledged that in a handwritten statement but said he was busy and had problems getting through on the telephone so finally came into the office. The landlord admitted service of the application for dispute resolution. I find the documents were served pursuant to sections 88 and 89 for the purposes of this hearing.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties and witnesses for the landlord attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed the tenancy began on September 1, 2013, it is now a month to month tenancy, the rent is \$750 per month and the tenant paid a security deposit of \$375 on August 31, 2013.

The landlord served the Notice to End Tenancy pursuant to section 47 of the Act for the following reasons:

The tenant or a person permitted on the property by him has

- a) significantly interfered with or unreasonably disturbed another occupant or the landlord;
- b) seriously jeopardized the health, safety or lawful right of another occupant or the landlord; and
- c) put the landlord's property at significant risk

The landlord and another tenant gave evidence that the tenant and his girlfriend significantly disturb other occupants with their noisy fights, swearing, phone calls and

other loud behaviour often after midnight. Two tenants have called the Police with complaints about this and one of them vacated. The tenant witness said he has to get up in the morning for work and this tenant and his friends often party all night and keep him awake. The tenant said he had apologized for the music noise when he first entered the tenancy and did not play bass anymore on his stereo. The witness acknowledged this but said the noise problem is much more than the music.

The landlord said the tenant is also jeopardizing the health and safety of other tenants. He has started a business in the parking lot of fixing cars and he has solvents, chemicals and bits and pieces of cars scattered in the parking area and he smokes while doing repairs. The landlord stated this jeopardizes the safety and health of other tenants.

The landlord also said the tenant is putting the landlord's property at significant risk by doing these car repairs because he leaves the lobby door open, strings electrical wires from the lobby to his parking spot; this makes the building unsafe for others. The tenant witness also said he had noticed significant damage to the parking lot with oil and gas damaging the asphalt.

The tenant said the landlord objected to him having friends overnight. He said if friends come and have a drink, he has them stay over so they can drive safely. He said he doesn't spill oil, he has a container and he keeps the extra parts in his pocket and he is not conducting a business but working on his own car.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The landlord has the onus of proof on the balance of probabilities to prove that they have good cause to end the tenancy. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside within 10 days. I find the tenant is out of time to dispute this Notice and I was not convinced by his reasons for being too late to file. I note he lives within an hour of the Residential Tenancy Branch and all information is readily available online so I find a problem with a telephone call is not sufficient excuse. However, I heard the evidence of both parties.

I find the landlord has satisfied the onus. I find the preponderance of the evidence is that the tenant and friends permitted on the property by him are significantly and unreasonably disturbing other occupants by their late night partying and noise. I find the tenant's evidence that he has friends who stay over when drinking corroborates the landlord's and witnesses' statements.

Furthermore, I find the tenant is jeopardizing the health and safety of other occupants by his parking lot activities which cause him to leave the building door ajar and string

electric cords across the lobby and parking lot. I find this is a building safety issue and a trip hazard. This also puts the landlord's property at significant risk.

I therefore dismiss the tenant's application to cancel the Notice to End the Tenancy for the reasons stated above. 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. As a result I grant the landlord an Order for Possession.

The tenant asked for more time but when the landlord attempted to make conditions to grant the time, the tenant refused.

Conclusion:

I grant the landlord an Order for Possession effective two days from service. 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 without recovery of the filing fee.

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 12, 2015

Residential Tenancy Branch

