



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPT, MT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause ("Notice"), an order of possession for the rental unit, and an order granting more time to make an application to cancel a notice to end tenancy.

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Near the outset of the hearing, the tenant confirmed that he had received the landlord's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-At the outset of the hearing, the tenant requested an adjournment as he had just received some documentary evidence and was not able to send the evidence in time for the hearing. The only documentary evidence filed with the tenant's application was a copy of the Notice.

In response to my question, the landlord objected to the adjournment, due to the issues raised in the Notice, and wished to go forward with the hearing.

In considering whether or not to grant the tenant's request for an adjournment, Section 6.3 of the Rules gives the Arbitrator authority to adjourn the dispute resolution proceeding to a later time at the request of either party or of the Arbitrator's own initiative.

Under Section 6.4 (d) and (e) I considered the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment and the possible prejudice to each party.

I declined the tenant's request for an adjournment, in part, due to the requirement that the applicant/tenant was required to file his evidence with his application, under section 2.5 of the Rules. I found this to be neglect on the part of the tenant.

I also determined that the landlord could be prejudiced by the adjournment, due to the nature of the complaints made against the tenant, as gleaned from the landlord's evidence, and due to the distinct possibility that the hearing would not be able to reconvene prior to the effective end of the tenancy listed on the Notice.

The tenant was later provided the opportunity to read from his documentary evidence, which included letters of character reference.

Preliminary matter#2-The tenant requested additional time to file an application to dispute the Notice; however, when reviewing with the tenant the date upon which he received the Notice, he was not able to state a definite date. The landlord confirmed that Notice was posted on the tenant's door on March 26, 2015, and under section 90 of the Act, documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on March 29, 2015, and therefore his application was timely filed on April 8, 2015. I therefore did not need to consider his request for additional time. Additionally, the tenant requested an order of possession for the rental unit; however, the tenant confirmed he still resided in the rental unit. I therefore did not need to consider his request for the order of possession.

The hearing proceeded only upon the tenant's application seeking cancellation of the Notice.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The evidence shows that this tenancy began on October 1, 2005. The rental unit is in a multi-unit building and the tenant's rental unit is on the first level, with surrounding tenants on either side. The evidence also showed that the entrance to the rental unit is through the patio.

As mentioned, the evidence showed that the landlord served the tenant with the Notice on March 26, 2015 and listed an effective vacancy date of May 30, 2015.

The cause listed on the Notice alleged that 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 that 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.

Pursuant to 11.1 of the Rules, the landlord proceeded first in the hearing in support of their Notice.

The landlord submitted that on March 25, 2015, the resident caretaker, in going about the landlord's business of posting notices on all the tenants' doors regarding a repair issue, observed a man and woman on the tenant's patio engaging in oral sex. The landlord submitted further that the sex act was fully visible to anyone in the complex, which is a family oriented residential property, including children and seniors.

The landlord explained that the rental unit is located in a high foot traffic area and is not secluded. Into evidence, the landlord submitted photographs of the entrance to this rental unit and the surrounding rental units, adjoined. The photographs also show upper level balconies with easy visibility to the tenant's patio and that there are large windows in the rental unit itself overlooking the patio where the sex act occurred.

The landlord submitted further that the behaviour of the two persons in engaging in a sex act was not acceptable in any environment, but particularly not in a family complex.

The landlord submitted further that there have been many instances of complaints about the tenant and his guests, including drug and alcohol consumption and smoking; however, the landlord submitted that most tenants are afraid to formalize a written complaint for fear of retribution. Submitted into evidence was a written notice to the tenant regarding this behaviour after one tenant submitted a written complaint.

Resident caretaker's testimony-

The caretaker confirmed the information given by the landlord, and further submitted that he was in a state of shock after witnessing the sex act being performed on the tenant's patio.

The caretaker's incident report, entered into evidence by the landlord, also stated that the couple was smoking on the patio and that the incident occurred about 2:15 p.m.

Tenant's response-

The tenant said he believed the caretaker's statement that he had seen the couple engage in oral sex on his patio, but submitted that he did not know these people, they were not his guests, and did not allow them on his patio.

The tenant submitted that these two persons were drunk and came by the rental unit earlier that day, but that he had them leave. The tenant submitted that the two persons committing the sex act were "bottle pickers" and using the front walkway, which abutted the rental unit, to take bottles to the bottle depot.

The tenant also submitted that the sex act was being performed in a blind spot on his patio and he did not see the act, confirming that he was home that day.

The tenant read from his evidence, which included letters from neighbouring tenants, attesting to the good character of the tenant.

Tenant's witness-

The tenant's witness submitted that the tenant was a straightforward and honest man, further stating that the woman in question had also offered him oral sex at one point.

Landlord's rebuttal-

The landlord submitted that when she talked to the tenant the next day, he referred to the female from the patio by a first name. The landlord submitted further that she was told by the tenant that he allowed the two persons to come by the rental unit to collect bottles.

Analysis

Section 47 of the Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or that 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.

The landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove the causes listed on their Notice.

In considering the evidence of the parties, I find that the landlord submitted sufficient evidence on the balance of probabilities to establish that a person or persons permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord is obligated, under section 28 of the Act, to protect the quiet enjoyment of all tenants, including freedom from unreasonable disturbance.

After hearing from the parties, I do not accept the tenant's testimony that he was unaware two persons were engaging in oral sex on his patio, in early afternoon hours, as the act was on the patio where there are windows with full view of the patio. While I do not necessarily find the tenant condoned the conduct, I do not find he acted appropriately enough to require the parties to leave prior to the conduct or to prevent the sex act. I also find the tenant failed to convince me that these two persons were strangers to him and that he did not allow these persons on the rental premises. I could not accept that these two persons would just stop and pick out the tenant's patio on which to engage in a sexual act.

I find a reasonable person would be unreasonably disturbed by the lewd conduct of the two persons engaging in oral sex. I take particular note that the activity could easily be seen by children who live in the complex.

I also considered that this was not the first time the tenant had been cited by the landlord for inappropriate behaviour, including drinking and smoking marijuana, on the tenant's patio, a part of the tenant's rental unit.

Considering the totality of the evidence, I find that the landlord has proven a person or persons permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice valid and enforceable. The tenant is advised that the tenancy ends on May 30, 2015, the effective end of tenancy date listed on the Notice, and he is required to vacate the premises by that date.

I have not granted the landlord an order of possession for the rental unit as the landlord did not make this request during the hearing.

Conclusion

The tenant's application seeking cancellation of the Notice 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: May 17, 2015

Residential Tenancy Branch

