



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on April 16, 2014 seeking to obtain an Order to cancel a Notice to end tenancy issued for cause.

The hearing was conducted by teleconference and was attended by two agents for the corporate Landlord and the Tenant, S.H. The Tenants listed the corporate Landlord as the respondent to this dispute. The Tenant S.H. affirmed that she was representing herself and her co-tenant, B.C. in this proceeding, as he was unable to attend at the hearing. Therefore, for the remainder of this decision, terms or references to the Tenants and the Landlord importing the singular shall include the plural and vice versa.

Each person gave affirmed testimony and confirmed receipt of evidence served by each other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Should the 1 Month Notice to end tenancy issued for cause on April 9, 2015 be upheld or cancelled?
- 2) If upheld, did the Landlord appear and make an oral request for an Order of Possession?

Background and Evidence

The undisputed evidence was the Tenants entered into a month to month tenancy agreement that began on June 1, 2010, for the monthly rent of \$675.00. The rent has

subsequently been increased and the current rent payable is \$749.05 per month. On June 3, 2010 the Tenant paid \$337.50 as the security deposit.

The Tenant filed her application to dispute a 1 Month Notice for cause on April 9, 2015, issued pursuant to Section 47(1) of the Act listing an effective date of May 31, 2015 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Put the Landlord's property at significant risk

The Landlords testified that both reasons listed on the 1 Month Notice relate to issues regarding the Tenant's son. They argued that the Tenant's son is not listed as a tenant or occupant on the tenancy agreement and argued that the Tenant is responsible for her guests' behavior while they are at the building.

The Landlords submitted documentary evidence in support of the 1 Month Notice which included, among other things, copies of: the tenancy agreement; warning letters issued September 3, 2013, October 6, 2014, October 21, 2014, a letter that was issued with the Notice on April 9, 2015; and a Digital Evidence Details list outlining the dates and evidence shown on 8 videos taken from their surveillance camera.

The Landlords argued that the Tenant's son's behavior towards other tenants and the Landlord's staff has become abusive. They have been receiving numerous noise complaints at times when the Tenant's son has been seen at the building. They submitted that the Tenant has also been caught on video letting homeless people and prostitutes into the building. Then on April 3, 2015 the Tenant's son was caught on video spraying the lobby with the highly flammable crazy string. They argued that in addition to being the lobby, the crazy string was also found all throughout the second floor and the stairwell. They noted that there had been three previous warnings to this Tenant so they are now seeking an eviction order.

The Tenant testified that the two written statements she had received from the Landlord did not list anyone's names. She argued that she was not a criminal and would not retaliate against any other tenants. She focused her testimony mainly on the Landlord's cleaning lady who she alleged spends a lot of time at her rental unit visiting her. The Tenant submitted that if there were noise problems or a problem with her son the cleaning lady would tell her. She argued that the cleaning lady has told the building manager that the noise was actually coming from a neighboring rental unit and not her unit.

The Tenant submitted that her 30 year old son has been staying with her off and on over the last five years and when he is at her rental unit she has control over him. She

indicated that he has an addiction problem and that he often stays with her to assist her. She admitted to letting him into the building about 4 times over the last couple of months and on those occasions when she lets him into the building he comes to her rental unit. She argued that the incidents that the Landlords are talking about him being verbally abusive involve situations when her son is leaving or has been let into the building by someone else and he gets provoked. She argued that he is simply responding to others who have provoked him.

The Tenant testified that just prior to her receiving the eviction Notice she had let two females into the building so they could come up to her rental unit and pick up their possessions that had been left there. She stated that she had heard that when they left her place they got into trouble in the lobby. She argued that she is not responsible for anyone once they leave her apartment and she is not responsible for son if he is let into the building by other people. She noted that the Landlord's video shows that her son had been let into the building by two other people.

The Tenant acknowledged receipt of both warning letters that were issued to her in October 2014 and stated that she totally agrees that if her son is out of control then he has to leave. She then argued that she is not the only one to be blamed when he is in the building as others let him into the building. She also spoke about issues regarding another tenant located in her building.

At this point in the hearing the parties were given the opportunity to settle these matters. The Landlord was willing to settle these matters on a mutual agreement to end the tenancy at a future date; however, the Tenant declined and wished to proceed with her application as filed.

The Landlord responded to the Tenant's submission by pointing out that the Tenant had admitted to letting the two females into the building a few weeks prior to the eviction Notice and that she did not escort them out of the building. He also pointed out that the Tenant had admitted to allowing her son to reside in her unit. He noted that the rental unit is only a 1 bedroom unit. Therefore, if her son is staying with her there would be 3 adults which are too many for a 1 bedroom. The Landlords then pointed to their October 21, 2014 warning letter and read the following into evidence from that letter:

Under no circumstances are additional occupants to be allowed to be occupying the apartment without written permission from [Landlord's name].

A reminder as well to the tenants, you are responsible for your guests, If they are causing problems here you will be evicted.

The Landlord confirmed that the other tenant's names were not listed on the copies served to the Tenants because those other tenants were afraid. They also argued that for all of the complaints they received about the Tenant's son he was always connected to the Tenant's rental unit and no one else. The Landlord acknowledged that there had

been some issues with another tenant and that those issues are the subject of a different dispute so he was not prepared to discuss them during this hearing.

The Landlord, H.A. testified that just prior to this hearing the Tenant had called her to discuss these matters. She stated that it was during that conversation that Tenant told her she had lost another son in the past so there was no way she could keep this son away from her. The Landlord stated that she has compassion for what the Tenant has gone through; however, she cannot allow other tenants to suffer from her son's behaviors.

In closing, the Tenant admitted to having the conversation with H.A., as described by her and listed above. The Tenant submitted that she is the only family her son has and she needs his assistance from time to time. As for the date when the crazy string was sprayed, she admitted to letting her son into the building that day but that she did not let him out. She argued that the previous landlord always told them that if they had an issue with someone who was not on a lease that they were to call the cops, which is what has happened in the past, so she questioned why it would not happen here.

Analysis

Upon review of the 1 Month Notice to End Tenancy issued April 9, 2015, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant or a person permitted on the property by the tenant significantly interferes with or unreasonably disturbs another occupant or the landlord of the residential property.

There was undeniable evidence in this matter that the Tenant had been issued written warnings regarding occupants being allowed to reside in the rental unit. The Tenant was also warned about having to be responsible for actions taken by her guests and that she would be evicted if problems continued. The Tenant even admitted that her adult son has been at her rental unit and provoked in the past.

The evidence that the Tenant's son had been involved in situations where he had disturbed other tenants or the employees of the Landlord was undisputed. What was in dispute by the Tenant was whether her son had been let into the building by her at the time those specific incidents occurred. She later contradicted herself by confirming that the day her son sprayed crazy string throughout the building she had let him into the

building but she had not let him out. There is further evidence that the Tenant's son intentionally took retaliatory action against the Landlord and their staff by spraying crazy string in the lobby and allegedly throughout the second floor and stairwell.

In addition to the foregoing, there was undisputed evidence that the Tenant let two females into the building to come to her rental unit and that the Tenant did not escort those females out of the building. Those same females were seen to be causing a disturbance in the lobby shortly after the Tenant let them into the building.

Based on the totality of the Landlord's submissions I find on a balance of probabilities, that the Tenant ought to have known that if she continued to allow guests in the building who caused disturbances to other tenants, she would be evicted. Accordingly, I find there is sufficient evidence to uphold the 1 Month Notice to end tenancy for cause and I dismiss the Tenant's application without leave to reapply.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

The Landlord appeared and requested an Order of Possession during the hearing. Accordingly, I award the Landlord an Order of Possession, pursuant to section 55 of the Act.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

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: June 01, 2015

Residential Tenancy Branch

