



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skeena Kalum Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 1 Month Notice to End Tenancy and an order giving them more time in which to make the application. The hearing was originally set for June 6, 2015, but for the reasons set out in the Interim Decision the hearing was adjourned to June 25, 2015. On June 25 both parties and their witnesses appeared and all had an opportunity to provide affirmed evidence and to make submissions.

As the tenants' application was filed within ten days of it being served on them, an order extending the time for filing is not required.

Issue(s) to be Decided

Does the landlord have grounds, within the meaning of the *Residential Tenancy Act*, to end this tenancy?

Background and Evidence

This tenancy commenced May 1, 2014. The rent for the unit is subsidized and the tenants' portion of the rent is \$616.00 due on the first day of the month. The tenants live in the rental unit with their three children aged six years, four years, and eight months.

The rental unit is a townhouse in a fifty unit complex. The townhouses are clustered in groups of eight or four. The landlord described the townhouses as being arranged in a horseshoe shape around a central roadway. There is a chain link fence around the entire property.

Each unit has a private space at the back, about fifteen feet wide. The private spaces are separated by fences that are perpendicular to the exterior walls of the building. The length of the fences varies but the longest is about thirty feet. There are no fences across the back of the private spaces.

The tenants' unit is at the end of an eight unit cluster. Behind this group of townhouses is some open space, the chain link fence, and a vacant lot. There are no established footpaths or roadways at the rear of these townhouses. The only way to go to the back of the townhouses is to walk there.

The housing coordinator testified that she manages this property and a shelter located about one half block away, and has done so for eight years. Her main office is at this complex.

The housing coordinator testified that when she goes out for a smoke break she has a clear view of the tenants' front door. She said that at the beginning of this tenancy the traffic to the tenants' front door seemed constant as she would see visitors coming or going at her morning break, noon break, and afternoon break.

She testified that within two weeks of the tenants moving in she started receiving complaints from other tenants about the volume of traffic to and from the tenants' unit. She spoke to the tenants about the situation. The housing coordinator and the female tenant both testified that there have been several conversations on this topic over the course of this tenancy, which the tenant described as the housing coordinator yelling at her. The tenant described the conversations as very stressful and she said she did not say too much to the coordinator because there was nothing going on.

In a letter dated June 26, 2014 the landlord advised the tenants that:

"Prior to moving into your apartment, you signed a document agreeing that no person residing or invited onto the property would engage in any criminal activity on the premises, such as any drug-related activity. . .

We have received several complaints of people coming and going from your residence at all hours of the night, hammering on your door, yelling outside and speeding in and out of the parking lot. Due to this and other information we believe that there may be drugs being sold out of your residence. This is a totally unacceptable situation. The RCMP has been advised of this situation and it must stop immediately.

Please note that the Crime Free Housing Addendum stated that a single violation of this is cause for termination of your tenancy and that proof of the violation shall no require a criminal conviction.

Please be advised that any further complaints of this nature in the future will result in the termination of your tenancy.”

The housing coordinator testified that for a while the traffic at the front door slowed down but then she started receiving complaints about foot traffic at the rear of the townhouses near this rental unit. This was the first time they had ever received complaints about people walking behind the townhouses.

The other neighbours became increasingly upset so on April 17, 2015, the landlord issued and served a 1 Month Notice to End Tenancy for Cause with an effective date of May 31, 2015. The reasons stated on the notice were:

- Tenant has allowed an unreasonable number of occupants in the unit.
- Tenant has engaged in illegal activity that has, or is like to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenants filed this application disputing the notice on April 21, 2015. In preparation for the hearing the landlord asked other tenants to submit their complaints in writing. Three of the neighbours did; the landlord testified that other tenants were too afraid to put anything in writing.

On May 10 the male tenant was involved in a serious accident. He was taken to hospital and on May 14 was taken by air ambulance to Vancouver General Hospital. The female tenant and infant daughter went to Vancouver the same day to be with him. They did not return home until June 16.

The housing coordinator testified that she recognized three of the people going to the tenants' unit as clients of the shelter and known drug users. Recently the local media reported on a drug bust in the community and she recognized one of the people charged as a visitor to the tenants' unit.

Two of the letters submitted as part of the landlord's evidence are from shelter clients who told the housing coordinator they had bought drugs at this unit.

A maintenance worker testified that she has worked at this complex for six months. Her usual hours of work are Monday to Friday; 8:30 am to 5:00 pm.

She testified that at first she noticed a lot of traffic going to the tenants' front door but when the weather got nicer the traffic moved to the back door. She described the activity as suspicious and made a point of watching where the people went. She said

she had a clear view of the back of the tenants' unit and all of the foot traffic was going to this rental unit. The maintenance worker said all the visitors were male and that their visits were extremely short: "zip in, zip out". Her estimate was that at least two men per day were making these extremely short visits. All of these visitors walk to the tenants' back door and return by the same route. She testified there has been a noticeable reduction in foot traffic and strangers in the complex since mid-May.

The maintenance worker testified that two tenants have asked if the landlord would supply blinds for their unit as these men are looking into their windows.

One of the tenants' neighbours testified. She lives in a unit four units down from the tenants with her mother and two young children. She described herself as a stay-at-home mother, home most of the time.

This neighbour testified that for the past several months, an average of ten people a day walk past the rear of her townhouse and walk back again within a minute or so. All of the people going past her back yard are male and she recognizes many of them from the community as drug addicts and street people. She testified that she has peeked around the fence and observed these men going to the tenants' unit.

She has lived in this unit for seven years and until this year never observed anyone walking past the rear of her unit. Her children play in their private space. She testified that she "was not born yesterday" and this type of activity makes her feel unsafe.

She complained verbally to the landlord on many occasions and when the landlord asked for a written statement both she and her mother provided them.

She testified that the activity has slowed down since May.

The female tenant's evidence is that they are a young family who live quietly and do not disturb anyone. She was adamant that there is no drug related activity at their home.

She testified that the men making these short visits are not coming to their home – "just because everybody walking by doesn't mean they're coming to my door". She testified that there are people walking behind her unit day and night as well. She does not look at them because it is none of her business.

The female tenant testified that they are the subject of intense scrutiny from the neighbours which has made them, their family and their friends very uncomfortable. As a result many of them come to the back door and her mother just stays in her motor

vehicle. The tenant's evidence is that many of their visitors only stay for a few minutes – just long enough to drop off food or ask how they are.

The female tenant complained about one neighbour as being particularly troublesome. She said this neighbour is always watching them and has gone as far as appearing to photograph the rental unit, the tenants and their guests. As part of their evidence the tenants filed a photograph of the neighbour's unit, which shows a camera in the neighbour's window, pointed at their door. A written statement from this neighbour was filed by the landlord but no photographs taken by her.

In their written statement the tenant included a list of their regular visitors. The list included a number of males who come by every day to play video games or watch television; older relatives who come for a visit or a barbecue; and several female relatives.

The female tenant stated that the complex is very noisy and her next door neighbours in particular are always yelling.

The tenants called a social worker as a witness. The social worker had accompanied a child protection worker to the unit as on three occasions – twice in October and once in April. Each visit was in response to a complaint about the tenants and each was unannounced. On each occasion they found no evidence of drug use or illegal activity. The social worker testified that if they had found anything suspicious they have a duty to report it to the police. On one of their visits in October the tenants told them that they had asked their friends to go to the back door. The social worker testified that the back door was open on this occasion and the smell of dope was coming in from the outside.

In her summation the tenants' advocate argued that:

- The landlord must prove that illegal activity is occurring and foot traffic is not an illegal activity.
- The foot traffic is not particularly upsetting to the neighbours.
- The tenants should have received a written warning before they were served with a notice to end tenancy.

Analysis

There is no evidence that the tenant has allowed an unreasonable number of occupants in the unit.

The landlord is not attempting to end the tenancy based upon a breach of a material term of the tenancy – namely, the Crime Free Addendum – so there is no legal

requirement that the tenants be given a written warning prior to being served with a notice to end tenancy.

The landlord is attempting to end this tenancy on the ground that tenants have engaged in illegal activity that has, or is like to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The relevant law is summarized in *Residential Tenancy Policy Guideline 32: Illegal Activities*. It sets out that the party alleging the illegal activity has the burden of proving that the activity was illegal. In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy the arbitrator should consider such matters as the extent of the interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants. The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard is the same as for ending a tenancy for any cause permitted under the legislation; proof on a balance of probabilities. Further, a criminal conviction is not a prerequisite for terminating the tenancy.

Most of the tenants' evidence about their guests is irrelevant. There are no complaints about women coming to and from the rental unit, people staying long enough to enjoy a video game or a barbeque, or people bringing food to the tenants.

The issue is whether the large number of male visitors, passing back and forth across the back of the townhouses, represent drug related activity at the rental unit.

Unless these men are going to a particular townhouse at the request of or with the permission of an occupant, they have no right to be in the back of this property. There is no public walkway and there was no suggestion by any witness that they could be using the route as a shortcut to somewhere other than one of the rental units. Frequent, very short visits are one of the hallmarks of drug related activity. Drug related activity can be the sale or distribution of drugs, with or without the use of drugs by the seller. Further, I accept the witnesses' evidence that they recognize many of these men as drug addicts or street people in this community.

Foot traffic of the nature and volume described by the landlord's witnesses would adversely affect the quiet enjoyment, safety and security of the residents of these townhouses.

The only issue is whether these men are going to the tenants' home or to someone else's. In addition to two witnesses testifying that they have seen some of these men go to the tenants' back door the correlation between the tenants' residency and the onset and subsequent decline in this activity is striking.

I find, on a balance of probabilities, that the tenants are engaged in illegal activity that has, or is like to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; that the landlord has established cause for ending this tenancy; and that the 1 Month Notice to End Tenancy for Cause dated April 17, 2015 is valid.

The tenants' application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord is entitled to an order of possession effective two days after service on the tenant. If the tenants have paid the July rent the order may not be enforced until July 31, 2015. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenants' application is dismissed and the landlord is granted an order of possession.

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: July 06, 2015

Residential Tenancy Branch

