



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, ERP, RP, LRE

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 47;
2. An Order for the Landlord to comply – Section 62;
3. An Order for emergency or other repairs – Section 32;
4. An Order suspending or setting conditions on the Landlord’s right of entry – Section 70.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness gave evidence under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy of a room in a basement suite started on June 1, 2015. Rent of \$400.00 is payable monthly on the first day of each month. On June 28, 2015 the Landlord posted a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door. The effective date of the Notice is July 31, 2015. The Notice sets out the following reasons for being issued:

- Tenant or person permitted on the property by the Tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.; and
- Tenant has engaged in illegal activity.

The Landlord states that there is no evidence of any illegal act. The Tenant has not paid July 2015 rent.

The Landlord states that the Tenant has been disturbing other tenants and the Landlord by

- banging on the tenants doors in the middle of the night, speaking to them in a threatening manner and not allowing them to speak;
- yelling at the Landlord through the windows;
- trespassing through the neighbour's garden;

The Landlord states that on one occasion, June 10, 2015, the Tenant banged on the Landlord's front door at 7:30 a.m. The Landlord states that the Tenant was furious and irate accusing the Landlord of making noise. The Landlord states that no noise was being made by the Landlord and that in fact the Landlord thought a break in was occurring. The Landlord states that 5 minutes later the Tenant banged again on the door to complain about the other tenants washing dishes. The Landlord states that the Tenant cannot be reasoned with. The Landlord states that on another occasion in June 2015 the Tenant took a recycling bag and when the Landlord spoke to the Tenant the Tenant covered his ears with ear plugs. The Landlord states that the Tenant told the Landlord to make an appointment if she wanted to speak with him and then refused to talk to her. The Landlord states that the Tenant has called the police twice because the Landlord was trying to talk to the Tenant. The Landlord states that on one of those occasions the Tenant disturbed the neighbours by asking to stay at the neighbours while waiting for the police. The Landlord states that the Tenant has made threatening

calls by leaving messages looking for a mutual agreement “or else”. The Landlord states that since giving the Tenant the Notice the Tenant’s behavior has become worse. The Landlord states that the Tenant is leaving the basement suite unsecured when leaving his unit and is repeatedly turning on and leaving hot water running from taps in the sinks and shower. The Landlord states that she does not feel safe, that the Tenant is unpredictable and that the Landlord cannot leave the house due to the Tenant leaving the door unsecured.

The Tenant states that he does not yell and only knocks hard. The Tenant states that he needed to talk to the Landlord as the other tenants were waking him up in the middle of the night by cooking or washing dishes. The Tenant states that he did accuse the Landlord of making noise early in the morning as he heard something roll across the floor. The Tenant states that this made him annoyed and that he was probably demanding as a result. The Tenant states that the noise was excessive enough to wake him up. The Tenant does not dispute that he plugs his ears while the Landlord speaks because she refuses to come to a mutual agreement with the Tenant. The Tenant states that the earplugs do not block the noise made by the other tenants. The Tenant states that he wants the other tenants to completely stop making noise. The Tenant does not dispute that he knocked on the other tenant’s doors in the middle of the night and states that this was done because one of the tenants made noise and he wanted to speak with the other tenant about this tenant’s evidence of being threatened.

The Tenant states that he maybe did leave the water running a couple of times but that it was because he was in a rush and simply forgot to turn them off. The Tenant states that the taps always drip and cannot be turned off completely. The Tenant states that he has never left the suite unsecured if nobody was home. The Tenant states that the other tenants wash their clothes at night and it does not bother the Tenant but that when the Tenant washed clothes one night at midnight one of those tenants turned off the dryer without informing the Tenant.

The Witness, a tenant in the suite, states that the Tenant started complaining about noise within three days of moving into the suite. The Witness states that when the Tenant woke him up at 4 a.m. the tenant was very angry about noise. The Witness states that the Tenant uses words or statements such as “or else” or “you see what will happen” to threaten the other tenants. The Witness states that when attempting to speak to the Tenant the Tenant will run to his room, lock the door and shout. The Witness states that it is impossible to communicate with the Tenant and that the Tenant becomes really angry. The Witness states that the Tenant leaves on the hot water tap for the shower and that on one occasion while the Witness was doing laundry the Tenant left the shower running and walked past the Witness smiling. The Witness states that he is a law student who returns home late from studying and that he then eats when he gets home. The Witness states that the Tenant informed him that all noises wake him up and then told the Witness that the sound of an opening fridge or microwave was not disturbing. The Witness states that the Tenant makes impossible requests and is not reasonable.

The tenant denies yelling and states that he was calm because others were sleeping. The Tenant states that he asked the Witness not to cook at night and that since the Witness agreed to try the Tenant did not press the issue. The Tenant states that the Witness however continued to cook at night. The Tenant states that the Witness would do things like use the toaster oven move cutlery and get water in a jug. The Tenant states that he does not make threats and that his words mean he promised that he will follow up with a legal response as the Tenant will not sit still and take it. The Tenant states that he has tried to avoid contact with the other tenants and the Landlord but that they keep coming to talk.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or

reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

While conflict can be a challenge for most folk to deal with, the Tenant gave evidence of his behavior during conflict that I find to be, at a minimum, immature and self-serving. I found the Landlord's evidence of the Tenant's yelling and banging on doors therefore to be credible. I also consider that the Witness evidence of the Tenant's behavior to be credible and supportive of the Landlord's evidence. I accept therefore that the Tenant becomes very angry quickly and over the least provocation, if any at all, and as a consequence becomes highly disruptive, overtly or otherwise. I do not find the Tenant's evidence of reasons for leaving the water running to be credible and I accept that the Tenant has purposely left the suite unsecured. I also do not find the Tenant's evidence of the intended meaning of the phrase "or else" to be credible.

I find therefore that the Landlord has substantiated on a balance of probabilities that the Tenant has created an unreasonably disturbing environment for the Landlord and other tenants and that the Tenant has significantly interfered with the other tenants' right to quiet enjoyment of the suite. As such I find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice.

Section 55 of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

As the Landlord orally requested an order of possession and the Notice has been found valid I find that the Landlord is entitled to an order of possession. As no rent has been

paid for July 2015 and considering that the effective date of the Notice is July 31, 2015, I make this order effective 2 days after its service on the Tenant. As the tenancy is ended and considering that the remaining claims of the Tenant are in relation to an ongoing tenancy I dismiss these claims.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: July 31, 2015

Residential Tenancy Branch

