Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Complete Residential Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant's application filed June 3, 2015: CNC

Landlord's Application filed June 12, 2015: OPC; FF

Introduction

This Hearing was scheduled to hear cross-applications the Tenant seeks to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued May 27, 2015.

The Landlord seeks an Order of Possession and to recover the cost of the filing fee from the Tenant.

This Hearing was originally scheduled to be heard on July 22, 2015. The matter was adjourned by consent to July 30, 2015. An Interim Decision was issued, which should be read in conjunction with this Decision.

The Hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

It was determined that the parties duly served each other with their Notice of Hearing packages and copies of their documentary evidence, by registered mail. The Tenant also provided the Residential Tenancy Branch with electronic evidence, a CD, which contained photographs. The Landlord's agent DL stated that the Landlord was not served with a copy of the CD. The photographs were provided in hard copy as well, and therefore I did not refer to the CD when considering the Tenant's Application.

The Landlord testified that the Notice was posted to the Tenant's door on May 27, 2015. The Tenant acknowledged receiving the Notice on May 28, 2015, at 10:00 a.m.

Issue to be Decided

Is the Notice a valid notice to end the tenancy?

Background and Evidence

Landlord's evidence and submissions:

A copy of the Notice was provided in evidence. The Landlord issued the Notice because "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 "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so".

The Landlord's agent DL testified that the Tenant is disturbing other residents at the rental property. She stated that the Tenant's behavior is affecting other tenants' rights to peaceful enjoyment of the rental property.

DL testified that the Tenant attached a bookcase on the "common front porch" between her home and her next door neighbour's home, which covers her neighbour's mail box. DL stated that Canada Post stopped delivering mail to the Tenant's neighbour ("CW"). DL testified that on February 17, 2015, the Landlord gave the Tenant written notice to remove the bookcase, after receiving a written complaint from CW on February 16, 2015. A copy of CW's complaint and the Landlord's written notice were provided in evidence. DL testified that a second written notice was given to the Tenant on May 13, 2015, stating that the Tenant must remove the bookcase by May 25, 2015. DL stated that the bookcase has not yet been removed.

DL testified that CL gave her notice to end her tenancy on March 31, 2015, because of the Tenant's behavior and that the Landlord is concerned that the Tenant's current neighbour ("LB") may also give her notice to end her tenancy. A copy of CW's March 31 letter was also provided in evidence.

DL testified that on April 21, 2015, another written warning was provided to the Tenant with respect to a complaint that the Tenant had heavily sprayed LB's dog's bed with Raid. The letter provides that any further complaints will result in an eviction notice. A copy of the April 21, 2015, warning letter was provided in evidence.

The Landlord also provided written statements from LB and other witnesses in evidence.
Dl stated that the Tenant shouted and swore at DL outside of the rental unit on May 27, 2015, calling her a "bastard". DL was fearful and pulled out her cell phone to record

their conversation, but the Tenant went back into the rental unit. DL did not call the police.

The Tenant's legal advocate cross-examined DL. In response to his questions, DL provided the following additional testimony:

- "D", A and D are eye witnesses to some of the Tenant's behavior. DL acknowledged that the Tenant's legal counsel had asked for contact information for the witnesses and stated that she did not provide it out of privacy concerns on the recommendation of another colleague.
- DL was the Landlord's agent when the tenancy started and was present at the move-in condition inspection.
- The Tenant did not tell DL that the Tenant is allergic to dogs. The rental property is advertised as "pet friendly". DL was unaware that the Tenant was allergic until May 27, 2015, when the Tenant "yelled at me".
- CW had also complained about the Tenant's treatment of her dog on February 16, 2015. DL's e-mail and letter to the Tenant dated February 17, 2015, was the first attempt to address the issue with respect to the Tenant's behavior towards other tenants' dogs. The Landlord usually receives written complaints from tenants but received none from the Tenant.
- It is a pet owner's responsibility to remove their pet's waste. DL was unaware that other tenants' pets' waste was not being removed from the lawn in front of the Tenant's home, until she saw the Tenant's photographs.
- DL tried to communicate with the Tenant by telephone on a number of occasions, but the Tenant would not answer the phone or return her phone calls.

Tenant's evidence and submissions:

The Tenant testified that she met with DL on February 27, 2014, for the move-in inspection. She stated that she was surprised to hear a dog barking and asked DL if there were dogs on the rental property. DL told her that her neighbours had dogs and that there were two of them. The Tenant testified that she told DL she was allergic and DL responded that they usually stay indoors.

The Tenant stated that she went to the office in March, 2014, and asked DL if the Landlord would put up a divider between her unit and her neighbour's unit. The Tenant stated that DL told her that there was no money for a divider, but that if the Tenant wanted to put one up, she could. The Tenant stated that she looked into the cost, but it was too expensive. She stated that she had a bookcase which fit just right, was safe, and did not invade her neighbour's personal space. The Tenant stated that she put the bookcase up in March, 2014.

The Tenant stated that she was friendly towards LB when LB moved in on May 15, 2015, but that she was unfriendly and had 2 dogs.

The Tenant testified that she took some photographs of LB's dogs because they were "pooing" on the lawn in front of her house. She stated that LB got very upset and told her, "You can't take pictures."

The Tenant stated that on another occasion, LB or one of her friends had parked a van in front of her automatic lights. She said that the sensors would not work because the van was in the way and that she had to come home at nighttime. The Tenant stated that she asked LB to move the van and LB swore at the Tenant and then went back inside. She stated that she has had no other conversations with LB.

The Tenant stated that she is kind to the dogs at the rental property and gives them treats.

The Tenant denied that mail service was disrupted. She said that "a week ago" a man came by and told her that mail boxes could be placed by the back doors.

The Tenant stated that the dogs have fleas, so she "sprayed around", but that she didn't spray directly on the dog's bed.

The Tenant provided a copy of a memo from a doctor in evidence, along with a letter of reference from the Tenant's employers, photographs and copies of two rent cheques with hand written notes.

The Tenant's legal counsel CM gave the following submissions:

- CM submitted that CW's written testimony is untested, historical evidence and is not relevant.
- CM submitted that the other tenant JC's written testimony is also untested and exaggerated. He submitted that JC breached his own tenancy agreement by refusing to clean up after his dog. CM stated that JC moved his dog's excrement to the Tenant's back porch and the Tenant stepped in it.
- CM stated that the three pages of notes from the other witnesses contain no explanation of who they are or how they are related to the issues.
- CM stated that the Tenant is allergic to dogs, that the Landlord was aware of that fact, and still allowed pets in the rental property. He submitted that even though the Tenant is allergic, she still tries to have a relationship with the dogs by feeding them.
- CM submitted that the Tenant is a 59 year old woman who is no threat to anyone. He stated that the Landlord has accepted other tenants' views without talking to the Tenant and that the other tenants simply don't like the Tenant. CM

stated that the letter from the Tenant's employer is in direct contrast to the Landlord's written statements.

- CM stated that there is no evidence of a postal stoppage at the rental property. He submitted that it was improbable that Canada Post would stop delivering mail and that the mail boxes could have been moved.
- CMS cited briefly from a 2014 British Columbia Court of Appeal decision and a 2008 British Columbia Supreme Court decision. He stated that these decisions were on point and that the Courts have found that significant interference must be of a grave permanent nature. He stated that this was simply a case of squabbling between neighbours and that the Tenant and the others were playing "tit for tat".
- CM stated that the Tenant was misunderstood by the other tenants because she communicates poorly and with "gusto", that English is her second language, and that there are cultural differences between the Tenant and the other tenants.
- CM submitted that the Landlord did not attempt to mediate between the Tenant and the tenants and that there is no evidence of the Landlord's mitigation by attempting to resolve the issues.

DL gave the following reply:

DL reiterated that she never gave the Tenant permission to put up a barrier between her side of the porch and LB's.

DL restated that Canada Post did suspend service. She stated that the Tenant's book case blocks LB's mail box, but not the Tenants. She stated that the postal service has reconvened due to the Landlord's attempts.

DL stated that the Tenant has neither responded, nor respected, her attempts to solve the issues between the Tenant and the other tenants.

DL restated that the Tenant never told her that she was allergic to dogs and that there is no evidence of allergies.

DL stated that the Landlord has filed complaints with the police because of the Tenant's behavior and that she requested copies of the police reports, but has not been provided with them.

Analysis

The onus is on the Landlord to provide sufficient evidence that this tenancy should end for the reasons provided on the Notice.

The Residential Tenancy Policy Guidelines provide the following with respect to material terms of a tenancy agreement:

> A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
>
> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.
>
> It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.
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> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.
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> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
> that there is a problem;
> that they believe the problem is a breach of a material term of the tenancy agreement;
> that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> that if the problem is not fixed by the deadline, the party will end the tenancy.

Neither party provided the Branch with a copy of the tenancy agreement. Therefore, I find that the Landlord has not provided sufficient evidence that the Tenant has breached a **material term** of the tenancy agreement. In any event, the Landlord did not advise the Tenant that it believed the erecting of a book case was a breach of a material term of the tenancy agreement.

With respect to the other reason provided on the Notice, I find that the Landlord has provided sufficient evidence to end the tenancy. The Tenant's legal counsel submitted that the Tenant's actions were not of a grave and permanent nature and therefore the Notice is invalid. He did not provide copies in evidence of the case law that he quoted. The Landlord is not seeking to end the tenancy under the provisions of Section 56 of the Act. Section 56 of the Act deals with an application for an early end to tenancy, where it would be unreasonable or unfair for the Landlord or other occupants to wait for a notice under Section 47 to take effect. In this case, the Landlord seeks to end the tenancy

under Section 47 of the Act. The Tenant acknowledged spraying insecticide around the areas where the other tenants' dogs live. I find that this constitutes unreasonable disturbance towards the other occupants. I also find that the Tenant significantly interfered with LB's ability to get mail. The photographs show that the Tenant's mail box is clear of the Tenant's book case, but that LB's mail box is covered by the book case.

The Landlord wrote to the Tenant on February 17 warning her that, "You need to respect your neighbours' right to privacy and the use and enjoyment of their unit. If we are informed that any of these disturbing and aggressive behaviours have occurred again, you will be issued an eviction notice." The Landlord also advised the Tenant that she blocked the access to LB's mail box and therefore the book case had to be removed immediately.

The Landlord wrote again to the Tenant on April 21, 2015, with respect to a complaint that the Tenant "heavily sprayed" a dog bed with raid, which can be harmful to dogs. Although the Tenant denied spraying the dog bed, she did not deny spraying the raid around the area where the dogs and other people congregate. It is also important to note that the doctor's memo dated June 10, 2015, and provided by the Tenant in evidence, simply indicates, "Patient states allergic to ASA and dog's dander". There is no other documentary evidence to support the Tenant's submission that she is allergic.

On the balance of probabilities, I find that the Tenant has significantly interfered with other occupants on several occasions and that the Landlord's Notice is a valid notice. The Landlord has a responsibility to the other occupants under Section 28 of the Act to provide them with freedom from unreasonable disturbance. I dismiss the Tenants' application to cancel the Notice to End Tenancy.

Section 55(1) of the Act states:

> **55** (1) 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.

Therefore, I find that the Landlord's Application for Dispute Resolution, which was filed after the Tenant filed her Application, was not necessary. I find that the Landlords are not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlord is provided with an Order of Possession effective **2 days after service of the Order upon the Tenant.** This 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