



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated July 29, 2015.

The Notice claims that the tenant or a person permitted on the property by her has significantly interfered with or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health or safety of lawful right or interest of another occupant or the landlord or has put the landlord's property at significant risk.

The Notice also claims that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or lawful right of another occupant or the landlord.

Proof of any of these allegations is grounds for ending a tenancy and eviction under s.47 of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that there are good grounds for ending this tenancy?

Background and Evidence

The rental unit is a room in a two bedroom lower portion of a fourplex building. The tenant rents the exclusive possession of a bedroom and shares the suite with the tenant of the second bedroom; a tenant with a separate tenancy agreement with the landlord.

This tenancy started in January 2015. The rent is \$425.00 per month. The landlord holds a \$212.00 security deposit.

The landlord rents out the suite above this one to a third tenant. He produces emails from Ms. A., the tenant living above this suite about the tenant, claiming that this tenant threatened Ms. A.'s daughters if they ruin her garden plants, "yelling rude things" at Ms. A.'s daughters, alleging that the tenant had an overnight guest, drinks excessively, was seen to have a white powder on her nose and entered Ms. A.'s unit uninvited.

The landlord says he has seen the tenant drunk or drugged, that her son uses the laundry and has slept there.

The landlord wished to call Ms. H.G. as a witness. She is the tenant of the second bedroom in this tenant's suite. Ms. H.G. was telephoned twice during the hearing but failed to answer either time.

The tenant says that she and the upper tenant has expressed remorse about the emails she wrote about the tenant. She says Ms. H.G. moved out at the end of July and notes that the landlord sent them both a handwritten notice saying the tenancy ended July 31 and that they both had to move out.

She agrees that her son will not stay overnight at the premises nor use the laundry facility.

Analysis

The ending of a tenancy is a very serious matter. It dispossesses a person from her home. To justify an eviction, a landlord will be required to provide convincing, cogent evidence to show that there is cause to end the tenancy.

Regarding the ground alleging illegal conduct, the evidence does not show on a balance of probabilities that the tenant has engaged in any illegal conduct. Indeed, no specific illegal conduct was referred to at hearing, except perhaps for the comment of the landlord having seen a white substance on the tenant's nose. This is far from convincing evidence. This ground for eviction fails.

There is no evidence that the tenant has seriously jeopardized the health or safety of lawful right or interest of another occupant or the landlord. This ground for eviction fails.

In order to show that another occupant has been "significantly interfered with" or "unreasonably disturbed" it is not enough for the landlord to assume that some conduct would cause such a result. An arbitrator considering whether or not another occupant

has been significantly interfered with or unreasonably disturbed by a tenant is not entitled to speculate on whether a certain conduct will achieve that result.

In this case the evidence for the landlord is composed of two unsigned emails from the upper tenant. Written statements are, at best, a limited form of evidence. The party giving the statement is not available to give detail or provide particulars or explain in more detail. The person giving the statement is not available to be questioned. Unsigned statements are virtually worthless as cogent evidence. They may contain allegations of virtually anything, without recourse to the alleged author. Emails are perhaps more convincing than unsigned statements because they contain a personal address that offers some verification of the authenticity of the author and some recourse in the event of willful misstatement.

Unfortunately, the upper tenant Ms. A. did not testify in this proceeding.

Prior to 2005, the *Residential Tenancy Act* required that in cases such as this that more than one other occupant be significantly interfered with or unreasonably disturbed. “[T]here must be some form of general disturbance to other tenants of the building as this avoids a purely inter-party personal dispute between two occupants with differing views” – Darling J., *Reschke v. Polygon Properties Ltd.* (1980) BCSC Van.Reg. A801020.

That provision has been changed so that only “another occupant” need be shown to have been significantly interfered with or unreasonably disturbed, but the admonition is still valid. Where the central issue is the claim of a single tenant against another, the adjudicator must proceed with caution.

The landlord has put himself at a distinct disadvantage at this hearing by relying on mere emails from Ms. A., the occupant alleged to have been interfered with or disturbed by the tenant’s conduct. Mr. Justice McEwan of the B.C. Supreme Court recently commented on the problem of determining credibility from a written statement in the case of *Kenyon v. BC (Superintendent of Motor Vehicles)*, 2014 BCSC 168. That case involved two competing written statements. McEwan J. determined the competing written statements could not be reconciled,” because the ordinary means of determining the truth are proscribed. There are no face-to-face hearings. Cross examination is not allowed.”

This problem is amplified where the written statement is challenged by the sworn testimony of a person attending the hearing.

In this case the tenant has testified that the upper tenant Ms. A. and she are not at odds. In these circumstances, I find that it is most likely that the friction between them was a “purely inter-party personal dispute between two occupants with differing views” as described by Darling J. in the *Reschke* case, above and not a “significant interference” or “unreasonable disturbance” justifying eviction.

Conclusion

I allow the tenant’s application and cancel the Notice to End Tenancy.

I note that in this tenancy, it is inappropriate for the tenant to permit overnight guests without the consent of the person renting the other bedroom and it is inappropriate for the tenant to permit anyone else to use the laundry facility in the premises.

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: September 11, 2015

Residential Tenancy Branch

