



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SALISH VILLA APT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled in response to an Application for Dispute Resolution filed by the Tenant on August 7, 2015, to cancel a 1 Month Notice to end tenancy issued for cause.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. 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.

Each person gave affirmed testimony. The Landlord confirmed receipt of the Tenant's application, hearing documents and a copy of the 1 Month Notice. The Landlord affirmed that they did not submit documentary evidence in response to the Tenant's application.

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. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice be upheld or cancelled?

Background and Evidence

The undisputed evidence was the Tenant entered into a written month to month tenancy agreement that began on August 20, 2010. Rent began at \$650.00 per month and has subsequently been raised to \$692.00. On August 20, 2010 the Tenant paid \$325.00 as the security deposit.

Upon review of the 1 Month Notice submitted into evidence the Landlord testified that the Tenant should have been issued the 1 Month Notice because there are too many

people living in his bachelor rental unit. The Landlord confirmed that the Notice was issued on July 31, 2015, pursuant to Section 47(1) of the Act, listing an effective date of August 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
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The Landlord testified that his father was the manager who had issued the 1 Month Notice and he must have made an error by not checking off the box relating to too the Tenant allowing an unreasonable number of occupants in the rental unit.

The Landlord submitted that the Tenant has allowed a female to move into the bachelor suite with him. He said the female was a former tenant who had been evicted. The Landlord argued that their bachelor suites are designed for only one tenant. He stated that the Tenant ought to have told them that the female was moving into the unit with him.

The Landlord spoke of an alleged incident where he saw the female partying in the yard at 3:00 a.m. one day. He said he approached her and she told him that she lives in the Tenant's unit. He said he could not recall the exact date of when this event occurred.

The Landlord asserted that his father checked off the other reasons on the Notice because the Tenant's balcony is filled with garbage. He submitted that it is not healthy to have garbage on the balcony and it is starting to smell.

The Landlord testified that no warning letters had been issued to the Tenant regarding the garbage on the balcony. However, the Landlord's mother had talked to the Tenant about removing the garbage about three months prior to the hearing.

The Tenant testified that he has not allowed the female to move in with him; rather, she has been there off and on to visit. He confirmed that his female friend has stayed overnight when she visits. The Tenant submitted that his friend does not live with him as she has a residence in a different city.

The Tenant stated that he had no knowledge of the alleged 3:00 a.m. partying event. He argued that he had not been told about this event prior to this hearing so he could not speak to it.

The Tenant confirmed that he has some bags on his balcony which were placed there when his unit was treated for bed bugs and other insects. He submitted that he was given instructions to prepare his rental unit and it stated that he should place his

possessions inside the garbage bags. He stated that he used the garbage bags to store his possessions and then placed them on the balcony.

In closing, the Landlord argued that the garbage bags were on the balcony prior to the bed bug treatment. He stated a second time that the Tenant has never been issued a written warning about removing the garbage bags from the deck.

Analysis

Upon review of the 1 Month Notice to End Tenancy issued July 31, 2015, I find the form and content of the Notice to be completed in accordance with the requirements of section 52 of the Act. In addition, I find that the Notice 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.

In this case, the Landlord presented oral evidence pertaining to the Tenant having too many people or an unreasonable number of occupants in the rental unit. That evidence is not relevant to the issues currently before me as it does not relate to either reason listed on the 1 Month Notice issued July 31, 2015.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The undisputed evidence was the Tenant has items inside garbage bags stored on his balcony. There was further evidence that there had been a recent pest control treatment completed on the Tenant's rental unit.

In the presence of the disputed oral testimony regarding the presence and contents of the garbage bags on the balcony, and in absence of documentary evidence to prove the contrary, I find the Landlord submitted insufficient evidence to prove this tenancy should end for the reasons that the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I make this finding in part due to the fact that there was insufficient evidence to support that the mere presence of garbage bags on a balcony would constitute a disturbance or a health or safety risk.

Accordingly, I uphold the Tenant's application and I cancel the 1 Month Notice to end tenancy issued July 31, 2015.

Conclusion

The Tenant was successful with his application and the 1 Month Notice issued July 31, 2015 was cancelled. This tenancy will continue until such time as it is ended in accordance with the *Act*.

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: October 21, 2015

Residential Tenancy Branch

