



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mission and District Senior Citizens Housing Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPC
Tenant: CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and the tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by two agents for the landlord; the tenant and his advocate.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 28, 2014 for a month to month tenancy beginning on September 1, 2014 for a monthly rent of \$406.00 due on the 1st of each month with a security deposit of \$203.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on August 7, 2015 with an effective vacancy date of September 30, 2015 citing the tenant has allowed an unreasonable number of occupants in the unit/site and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord;
- A copy of a Proof of Service document that states the Notice to End Tenancy was served personally to the tenant on August 9, 2015 at 2:45 p.m.; and
- A copy of a Proof of Service document that states the Notice to End Tenancy was served personally to the tenant on August 10, 2015 at 8:15 p.m. and that this service was witnessed by a third party.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on August 8, 2015 with an effective vacancy date of September 30, 2015 citing the tenant has allowed an unreasonable number of occupants in the unit/site and the tenant has

engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord.

The landlord submitted that he had originally served the tenant with the 1 Month Notice with dated August 7, 2015 without a witness and he served the second 1 Month Notice with a witness the following day. The tenant's advocate took no position on this issue.

The landlord submits that prior to the issuance of the 1 Month Notice to End Tenancy he was having upwards of 36 people per day coming and going from his rental unit. The landlord acknowledges that since the Notice was issued this number has been reduced to approximately 6 guests per day.

The landlord submits that the other tenants in the building are afraid of these guests. The landlord testified that some of these guests have been found sleeping in the hallway; in the lounge overdosing; and taking over the gazebo in the front of the property. The landlord testified the other tenants in the building are so afraid of these guests that they are afraid to submit any writing complaints.

The landlord testified that in March 2015 one of the guests entered into an elevator that a cleaner was on, physically touched her, and made advances towards her. The parties agreed that since the landlord spoke with the tenant about this guest the guest has not returned to the residential property.

The landlord testified that another tenant had been confronted by one of these guests and asked for money. When she refused them the guest threatened her with physical harm. The tenant did not to report anything in writing or to call the police.

The landlord also submitted into evidence 5 warning letters to the tenant that provide the following warnings:

- November 21, 2014 – "This is notice regarding your guests staying on the premises and sleeping in the lounge. This behaviour leaves our other tenants feeling unsafe and vulnerable. This is not acceptable as per your lease agreement. If this continues it may result in an eviction notice..."
- January 22, 2015 and January 26, 2015 – "It has come to my attention that you are letting in a large number of undesirable guests into the building. This behaviour leaves our other tenants feeling unsafe and vulnerable"; and
- July 13, 2015 and August 7, 2015 – "It has come to my attention...that you willingly let in two well known persons that you are well aware they are no longer welcome in the building due to objectionable behaviour..."

The tenant's advocate specifically asked the landlord if police had ever been called in response to an incident with one of these guests. The landlord outlined the event above but never specifically confirmed or denied that police had been called.

The landlord submitted that with the exception of some of these guests staying overnight in the tenant's rental unit occasionally he does not believe that the tenant has allowed anyone to move into the rental unit.

Analysis

Based on the testimony of both parties, I find that the landlord intended both 1 Month Notices to be representative of a singular intent to end the tenancy related to the issues submitted as cause in this hearing. As such, this decision applies to the 1 Month Notice to End Tenancy for Cause issued on August 7, 2015 and to the 1 Month Notice to End Tenancy for Cause issued on August 8, 2015.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) The tenant is repeatedly late paying rent;
- (c) There are an unreasonable number of occupants in a rental unit;
- (d) The tenant or a person permitted on the residential property by the tenant has:
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk;
- (e) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:
 - (i) Has caused or is likely to cause damage to the landlord's property,
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) The tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;
- (h) The tenant
 - (i) Has failed to comply with a material term, and
 - (ii) Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];
- (j) The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority; or
- (l) The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) The date the tenant receives the order;
 - (ii) The date specified in the order for the tenant to comply with the order.

Occupants are described in Residential Tenancy Policy Guideline 13 as a person who is not a tenant that a tenant allows to move into the premises and share the rent. The new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

While Section 47(1)(c) allows the landlord to end a tenancy if the tenant allows an unreasonable number of occupants into a rental unit, I find, based on the landlord's submissions that the tenant has not allowed anyone to move into the rental unit that would be considered an occupant.

Rather, I find the landlord seeks to end the tenancy because of the number of guests the tenant has entering his rental unit. Section 30(1) states a landlord must not unreasonably restrict access to a residential property by the tenant of a rental unit that is part of the residential property, or a person permitted on the residential property by that tenant.

While I acknowledge that the number of guests the tenant allowed on a daily basis prior to the issuance of the Notice is a large number, I find it would be unreasonable to restrict a tenant's guests based solely on the number of them he has. Further, Section 47 does not provide the landlord an opportunity to end a tenancy based on an unreasonable number of guests.

As such, I find the landlord has failed to establish Section 47(1)(c) as a cause to end the tenancy.

Section 47 does allow the landlord to end a tenancy based on the behaviour of a tenants guests. Specifically and as noted above, Section 47 allows a landlord to end the tenancy based on the following subsections:

- (1)(d) If the guest's behaviour causes significant disturbances to other occupants or impacts the lawful rights of other tenants or the landlord;
- (1)(e) If the guest has committed an illegal act that results in damage to the property or impacts the lawful rights of other tenants or the landlord;
- (1)(f) If the guest has caused extraordinary damage to the landlord's property;
- (1)(h) If the guest's behaviour constituted a breach of a material term of the tenancy; and
- (1)(l) If the guest's behaviour causes the tenant to be in breach of an order of the director.

As per the 1 Month Notices issued in this case, the landlord indicated that the tenant or the tenant's guest had committed an illegal act that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

As such, the landlord must first establish that an illegal act has been committed by the tenant or the tenant's guest. From the landlord's submissions I find the landlord has failed to provide any evidence to establish that tenant or the tenant's guest had committed any such acts.

While the landlord testified that at least one of the tenant's guests frequented a known drug house in the area the landlord provided no evidence that any illegal activity was committed on the residential property by that guest.

In relation to the landlord's submission of the potential physical assault and unwelcomed advances on a cleaner in the elevator, there is no evidence that a criminal complaint was made or that charges were laid against the guest.

Likewise there is no evidence before me that a criminal complaint was made or charges laid against any of the tenant's guests in relation to threatening another tenant in an effort to obtain money.

As such, in the absence of evidence that any criminal charges being pursued for either of these events, I find the landlord has failed to provide sufficient evidence that the acts committed constitute illegal activity.

As a result, I find the landlord has failed to establish Section 47(1)(e) as a cause to end the tenancy.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued on August 7, 2015 and the 1 Month Notice to End Tenancy for Cause issued on August 8, 2015 are cancelled and I order the tenancy remains in full force and effect.

Further, I dismiss the landlord's Application for Dispute Resolution in its entirety.

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 23, 2015

Residential Tenancy Branch

