



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant CNC
Landlord OPC, OPB

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking to end the tenancy and to receive an Order of Possession.

The Tenant filed seeking an Order to cancel the Notice to End Tenancy and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by
personal delivery on September 28, 2015 with a witness.

Service of the hearing documents by the Tenant to the Landlord were done by
registered mail on September 15, 2015, in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties Hearing Packages.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. What other considerations are there?

Background and Evidence

The tenancy started on August 20, 2011 as a month to month tenancy. Rent is \$680.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$335.00 on September 29, 2011.

The Landlord said she issued a 1 Month Notice to End Tenancy for Cause dated September 15, 2015 as a result of numerous complaints and letters of complaint from other tenants on the rental complex. The reasons on the Notice to End Tenancy are:

- An unreasonable number of occupants in the unit.
- Significantly interfered with or unreasonably disturbed other tenants or the landlord.
- Seriously jeopardized the health and safety of other occupants or the landlord.
- Put the landlord's property at significant risk.
- Damaged the landlord's property.
- Adversely affected the quiet enjoyment, security or physical well-being of other occupants or the landlord.
- Jeopardized the right or interest of other occupants and the landlord.
- The Tenant has caused extraordinary damage to the unit, site or property.

The Landlord said she check off all these reasons but the main reasons are the Tenant is allowing numerous guesses into the rental unit at all hours of the night which is adversely affecting other occupants and the Landlord. The Landlord said the Tenant started letting homeless people and male guests into the unit over the last 3 months which has put the property at risk and unreasonable disturbed a number of other tenants. The Landlord said that she issued a warning letter on September 8, 2015 to the Tenant to notify the Tenant that her tenancy agreement does not allow additional people staying in the renal unit and the Tenant was too noisy because of people coming and going in all hours of the night.

Further the Landlord provided copies of 4 complaint letters from other tenants about the Tenants loud behaviour and the many people coming and going in all hours of the night to the Tenant's renal unit. One of the complaint letters indicated the neighbour to the Tenant had to chase a person away from their balcony in the middle of the night. The letter says they were disturbed on 3 different occasions and each time the persons involved said they were looking for the Tenant in unit 109.

Further the Landlord provided a Witness J.C. who gave affirmed testimony that she wrote the complaint letter about chasing people away in the middle of the night and she said the Tenant and her friends scare the Witness. As well the Witness said she has had a number of incidents with the Tenant including one that the Tenant tried to kick her door in. The Witness said she takes care of children during the day and when the Tenant tried kicking in the door on her renal unit it scared her and the children. The Witness said she called the Landlord and the Police and both told her the hearing for eviction was scheduled so she would have to wait for that result. The Witness said that the Tenant's behaviour has changed in the last 3 months and it is very difficult to deal with the Tenant. The Witness continued to say the Tenant has 1 to 3 men in her unit almost every night there is loud noise and the sounds of fighting in the Tenant's unit when the men are visiting. The Witness believes there is sexual activity going on in the Tenant's rental unit. There were no questions for the Witness from either the Landlord or Tenant.

The Tenant said the Witness is lying and the Landlord's Witness has called the Tenant a prostitute which is not true. The Tenant said the Witness, the Landlord and the other tenants that wrote letters are all friends and want to get her out of the rental complex. The Tenant said

she has not felt safe in her rental unit so she is staying with a friend J.W. in another building in the rental complex. The Tenant said she does not have guests staying over in her rental unit and she is not noisy. The Tenant said she has not been staying in the unit for the past month except to get cloths and other things from her rental unit.

The Tenant provided a Witness J.W. to confirm her testimony. The Witness J.W. said the Tenant has been staying with him for approximately 1 month and he does not believe the Tenant has caused the issues that the Landlord and other tenants have said the Tenant has done. The Witness J.W. said he is helping the Tenant try to find a new rental unit but they have been unsuccessful to date. The Witness J.W. said the Tenant is a good person, pays her rent on time and she is not a prostitute. There were no questions for the Witness from either the Tenant or the Landlord.

In closing the Tenant said she wants to continue this tenancy because she cannot find another rental unit and she believes the Landlord and the other tenants who complained about her are lying. As well the Tenant said she did not receive the warning letter dated September 8, 2015 from the Landlord.

The Landlord said in closing that her company wants to end this tenancy. The Landlord requested an Order of Possession for October 31, 2015 if her application is successful.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord and some of the other tenants. The Landlord said the Tenants have unreasonable disturbed other tenants and the Landlord, seriously jeopardized the health and safety of other occupants or the landlord and the Tenant has adversely affected the quiet enjoyment, security and safety of other tenants or the Landlord. The Landlord also said the Tenant has put the property at risk but this is not the main reason the Landlord made this application.

I have reviewed the evidence and testimony and I find that the issues regarding damage and risk to the property as reasons to end the tenancy do not satisfy the level of risk or damage required by the Act to end a tenancy; therefore I dismiss the Landlord's request to end the tenancy on the reasons of property risk and damage.

Further the reason of an unreasonable number of occupants in the unit is based on persons living in the unit not guests to the rental unit. The Tenant, Landlord and Witnesses all referred to the persons coming to the Tenant's rental unit as guest not occupants living in the unit; therefore the Landlord's claim that there are an unreasonable number of occupants in the unit does not meet the reasoning to end the tenancy. I dismiss the Landlord's request to end the tenancy on the grounds of an unreasonable number of occupants in the unit.

Further Section 47 (1) (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, the other tenants must have been **significantly interfered with, unreasonable disturbed or their health and safety seriously jeopardized**. As such the Landlord must show that the Tenant **seriously jeopardized** the health or safety of the landlord or another occupant **significantly interfered** with or **unreasonable disturbed** other tenants. The Landlord has submitted evidence in the form of signed witness statements that say there

were significant issues over the last three months of loud noises from the Tenant's unit, persons coming and going to the Tenant's unit in the middle of the night which caused other tenants to deal with security issues of removing these persons and an incident that the Tenant tried to kick in another tenants door following an argument. The Landlord has provided copies of the complaint letters and a copy of the warning letter issued September 8, 2015 for loud noise and additional guests. I have also reviewed the Tenant's testimony in which the Tenant said the Landlord and other tenants are lying because they are friends and want to evict her. The Tenant did not provide any evidence to support this claim. The Tenant did provide a Witness J.W. who spoke to the good character of the Tenant but he did not provide any testimony that negated the Landlord's evidence and Landlord's witness testimony. Consequently I find the Landlord has established grounds to support the 1 Month Notice to End Tenancy for the reasons of **significant interference** and **unreasonable disturbance** of other tenants or the landlord. Consequently I award the Landlord an Order of Possession with an effective date of October 31, 2015.

Further I dismiss the Tenant's application due to lack of evidence to support her claims.

Conclusion

An Order of Possession effective October 31, 2015 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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 28, 2015

Residential Tenancy Branch

