



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, FF

Introduction

This hearing was convened in response to an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated August 06, 2015, with an effective date of September 30, 2015.

Both parties attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to this claim and to make relevant prior submission of document evidence to the hearing and fully participate in the conference call hearing. The landlord was represented by the resident manager. Both parties acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

At the outset of this hearing the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for sufficient reason as that stated in the Notice to End.

Issue(s) to be Decided

Is the Notice to End tenancy valid?

Background and Evidence

This tenancy began December, 2004. A copy of the 1 month Notice to End was submitted into evidence. The Notice to End was issued for the reason the tenant has;

-seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant disputes the Notice to End. The parties acknowledge the tenancy

relationship is stressed and mired in multiple issues. However, the landlord's evidence is that the Notice to End was given solely for the reason alleging the tenant's dog routinely urinates on the tenant's balcony and that the situation has attracted complaints from the tenant below the applicant, which claim they receive the dog's urine from the balcony above, and that "it smells bad". The tenant claims their dog no longer urinates on the balcony - since taking away the dog's mat on which they were accustomed to using to urinate; and, that their balcony door is blocked and the balcony is not accessible to their dog.

The landlord provided into evidence that they gave the tenant a letter in April 2015 asking the tenant to make sure to prevent their dog from urinating on their balcony. In the first half of July 2015 the landlord received complaints from the lower tenant the dog was again urinating on the balcony above - that they could smell it and received the urine on their balcony. The landlord testified they investigated the claimed urine on the complainant's balcony and on the landlord smelling the liquid determined it was dog urine. On July 16, 2015 the landlord gave the tenant a letter advising, among other issues in the majority, that they continued to receive complaints the dog was again urinating on the balcony contrary to the tenant's agreement not to let it occur – and that if they continued to receive complaints the tenant would be given a Notice to End. The resident manager provided that on July 28, 2015 they asked the lower tenant if the upstairs dog was, "still peeing on the balcony" and received 2 short e-mails from the lower tenant the dog had urinated the day before, and days before then, and then later on the evening of the enquiry at 8:35 p.m. The resident manager accepted the information and on July 29, 2015 the landlord gave the tenant a 1 month Notice to End for the reason the tenant's dog continued to urinate on the balcony, creating a health hazard, bad smell and disturbing the tenant below them. The landlord rescinded the Notice for administrative reasons only to replace it the following week with a new Notice on August 06, 2015 for the same cause / reason as the first Notice.

The tenant disputes the tenants below continued to receive dog urine; but rather, perhaps some other solution smelling similar to urine.

The landlord entered evidence of a short video (approximately 20 seconds) taken by the lower tenant / complainant on August 11, 2015 - before the tenant filed for dispute resolution as the landlord claims the tenant's negligence continued after receiving the Notice to End. In support for their reason for ending the tenancy the video depicts a fluid dripping from the balcony above onto the balcony of the complainant – claimed by the complainant to be the dog urinating above them. The video has no discernible audio or other reference. In addition, the landlord provided a list of additional occurrences reported by the lower tenants following the July 28, 2015 reports of the dog

urinating on the balcony above and intruding on the balcony of the tenants below:

July 29, 31,
August 01, 4, 8, 11 (with a video file), 16, 20, 21, 22,
September 7, 12

The evidence is that all reports are of occurrences in the evening hours, in concert with previous complaints.

Analysis

In this type of application, the burden of proof rests with the landlord. Effectively, the onus is on the landlord to prove, on a balance of probabilities, that:

- the tenant was served with a valid notice to end tenancy; and
- the reason stated on the notice for ending the tenancy exist and are sufficient.

I accept that on or about July 15, 2015, the landlord was satisfied as to the presence of dog urine on the lower tenant's balcony. I further accept that in their letter of July 16, 2015 the landlord wrote that if they received *another* complaint of the tenant's dog urinating on the balcony, "where people below have urine running on their heads", the tenant would be given a Notice to End. I find the landlord's issuance of a Notice to End was conditional on them receiving another complaint of dog urine: which, upon their enquiry to the tenant below them, they received on July 28, 2015 - of several additional occurrences. I find this latter information of July 28 cursory; however I find it credible as the basic information is similar to previous occurrences – especially the time of day to which the majority of complaints pertain. I have given consideration to the tenant's evidence their dog was accustomed to using the balcony to urinate and that the tenant claims they put a stop to it by removing a component of the dog's habit – effectively, the dog's toilet. I have also given consideration to the tenant's testimony some other solution smelling similar to urine would drip onto the balcony below. Given the grave consequences the landlord promised would indeed follow in the event of continued complaints of the dog urinating, I accepted evidence from after a period of time following the receipt of the Notice to End, and again I find the landlord's evidence credible that the intrusions to the complainant continued. I find the totality of the landlord's evidence is sufficient for me to prefer the evidence of the landlord over that of the tenant and to conclude, on balance of probabilities; the tenant *seriously* has jeopardized the lawful right of another occupant. As a result I find the Notice to End valid. The landlord orally requested an Order of Possession in the hearing, and I accordingly must grant an **Order of Possession** pursuant to Section 55(1) of the Act, which states:

Order of possession for the landlord

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.

None the less, it must be emphasized that ending a tenancy is a serious matter and it remains available to the parties, if possible, to mutually resolve their issues or dispute.

Conclusion

The tenant's application is **dismissed**.

I grant the landlord an Order of Possession effective **November 30, 2015**. The tenant must be served with the Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Decision is final and binding on both parties.

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

