



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RR, MNDC

Introduction

By an application filed September 21, 2015, the tenant seeks to cancel a one month Notice to End Tenancy for cause dated September 14, 2015. She also seeks relief in the nature of a compliance order that the landlord provide written warnings following complaints about her and that the landlord only communicate with her in writing. She also seeks compensation for “loss of quiet enjoyment” resulting from the landlord’s alleged infringement on the tenant’s full use of the rental unit and the landlord’s alleged fostering of ill will between the applicant tenant and other occupants of this shared accommodation.

At hearing, the tenant advanced a claim for loss of heat in rental unit, but withdrew it as that claim had been dealt with at a hearing that occurred on October 6, 2015 (related file noted on front page of this decision).

Similarly, at hearing the tenant raised issues regarding the necessity of conduct warnings from the landlord and a requirement to communicate in writing. I have read the decision dated October 8, 2015, given after the October 6, 2015 hearing and see that it dealt with those two issues as well. They will not be considered as claims for orders or compensation in this dispute resolution.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that there is good cause for ending this tenancy under the provisions related by the landlord in the Notice? Does that evidence show that the tenant is entitled to a compliance order or a monetary award?

Background and Evidence

The rental unit is a bedroom in a four bedroom, shared accommodation in the lower portion of an urban home. The landlord and her husband have been residing in the upper portion of the home.

This tenancy started in May 2015. The current monthly rent is \$450.00, due on the first of each month, in advance. The landlord holds a \$225.00 security deposit.

The Notice in question alleges that the tenant has a) significantly interfered with or unreasonably disturbed another occupant or the landlord, b) has seriously jeopardized the health, safety or lawful right of another occupant or the landlord, and/or c) 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.

Proof of any of the three grounds is a lawful reason for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the “RTA”).

At hearing, the landlord withdrew the third ground regarding illegal activity.

The landlord testifies that there is no tenancy contract. It is clear that whether or not their agreement has been reduced to writing, the parties have a valid and enforceable tenancy agreement as per the terms outlined above.

She says she has received many complaints about the tenant from her other tenants sharing kitchen, bathroom and common areas with the applicant tenant and she refers to emails and letters signed by the co-tenant Ms. M.J. as well as emails from and signed by the co-tenants Mr. S. D's and Mr. E.C.

She says that three co-tenants have vacated as the direct result of the tenant's conduct.

The co-tenant Ms. M.J.'s writings state that the tenant "occupies the sink" for almost half a day and that when the tenant uses the stove she doesn't let anyone else use it. She indicates that on one occasion of unspecified date, the tenant blocked her from using the stove. She says that the tenant has insulted her country of origin and its people in front of her. She says the tenant sometimes keeps the (gas) stove turned on and doesn't put anything on it. She says that everyday the tenant "prepares" at least three or four hours in the kitchen.

Ms. M.J. also complains that the tenant is "pulling her foot every ten minutes on the rug." It was not made clear what that meant.

Ms. M.J. provided an email about an incident occurring on October 17th. That date is well past the date the Notice was issued. Conduct alleged to have occurred after a Notice to End Tenancy for cause, cannot fairly be raised as grounds for the Notice. A Notice must rise or fall based on cause that has given up to the date of the Notice.

The co-tenant Mr. S. D's. testifies that he became a tenant in July and that for the past four months his experience has been "horrible" because of the tenant's conduct. He says the tenant "has not cared for other tenants in the house" over the four months. He says he does not get to use the kitchen sink because it is always blocked by the applicant tenant. As well, she leaves food waste in the sink and hair in the bathroom.

He says that the applicant tenant uses the bathroom for two hours at a stretch and at a time when he needs to use it to get ready for school. He says the applicant's conduct is affecting his studies. He says he now cooks once per week and eats out a lot.

He also relates an incident where the tenant is alleged to have shouted at him not to use the microwave. A disagreement erupted and, he says, the applicant tenant started "passing comments on me and my country." It would appear that this incident occurred sometime after the Notice had been issued and so I disregard it.

The co-tenant Mr. E.C. testifies that the applicant tenant cooks and washes with no consideration for the other tenants. He says she does so late at night and it is disturbing. He feels very uncomfortable. There have been two hearings with the Residential Tenancy Branch but nothing has changed. He says he has a good relationship with the other tenants. He says the tenant's disturbing conduct has occurred during the months of July, August and September, 2015.

The applicant tenant testifies that she has rented all over the City for thirty years, implying that it has been without any conflict or disputes. She indicates that she gets

absolutely no feedback from the other tenants. She tries to be considerate but there is a communication gap. The other tenants do not relay their complaints to her.

Analysis

There have been two prior hearings between these parties. The most recent hearing, October 6, 2015, dealt with the tenant's claim for a monetary order and a rent reduction.

The earlier hearing, held July 30, 2015, was regarding the tenant's application to cancel a one month Notice to End Tenancy for cause that had been given alleging one of the same grounds in issue here: that the tenant was significantly interfering with or unreasonably disturbing other occupants or the landlord.

It appears that the complaints were generally the same as well, namely: monopolizing the common area, spending a very long time preparing meals, spending too long in the washroom and not cleaning it, using the common area late at night.

In a decision dated August 12, 2015, the arbitrator in that case cancelled the Notice, determining that taking a long time in the bathroom was not illustrative of *significant* interference or *unreasonable* disturbance and that it had not been shown that the tenant was *unreasonably* loud when she used the common area in the late evening or that she was *excessively* unclean in leaving hair in the shower.

The arbitrator was also influenced by what he perceived to be a lack of formal notice to the tenant from the landlord regarding behaviour considered to be unacceptable.

The arbitrator made reference to the particular situation of virtual strangers sharing living accommodation and I agree that shared accommodation presents specific limitations and challenges for the landlord and the individual tenants sharing the common space, and disputes arising from different lifestyles, work schedules and expectations are not unusual.

The evidence before me goes much further. Though the witnesses were not exact on their dates, I am satisfied that since the decision of August 12, 2015, the tenant has repeatedly interfered with the reasonable use of the kitchen and bathroom by other tenants.

She has frequently and unreasonably prevented the use of the kitchen area and bathroom by her co-tenants. The evidence shows that her interference goes well

beyond just an occasional incident. All of her co tenants are complaining of the tenant's repeated interference with normal living in the household. The interference is so significant that three tenants have vacated the premises because of her.

By the fact of the August 12th decision, the tenant had been given notice that her conduct was disturbing the other tenants and interfering with their use of the premises. There was no need for the landlord to give any further warning or caution, written or otherwise. Despite that decision, the tenant has continued to demonstrate a bewildering lack of consideration for her co-tenants.

I find that the tenant has significantly interfered with her cotenants' reasonable and normal use of the shared accommodation. For that reason, I find the Notice to End Tenancy is a valid Notice.

As a result of the Notice, and by operation of s. 47 of the *RTA*, this tenancy ended on October 31, 2015 and the landlord is entitled to an order of possession, as requested at hearing, pursuant to s. 55 of the *RTA*.

The landlord has made attempts to resolve issues between the applicant tenant and the other occupants. She has twice taken steps, properly in my view, to evict the tenant. In my view, she would possibly have been exposed to a claim for damages from the other tenants had she done nothing about their complaints.

Her actions appear to be fully consonant with her attempt to ensure a harmonious living environment in the rental premises. I find no basis to award the tenant compensation for loss of quiet enjoyment, damages or a rent reduction.

During the hearing the tenant intimated that recently the landlord or perhaps her workmen had been entering the common area. It should be noted that the Residential Tenancy publication "A Guide for Landlords and Tenants in British Columbia" states that a landlord may enter any common areas that are shared with others at any time without giving a tenant notice.

Conclusion

The tenant's application is dismissed.

The landlord will have an order of possession.

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: November 25, 2015

Residential Tenancy Branch

