



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an order to cancel a One Month Notice to End Tenancy for Cause.

The tenant, an advocate for the tenant and the landlord's agent (the landlord) attended the conference call hearing. The parties gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the tenant in advance of this hearing. The tenant confirmed he did not provide any documentary evidence and confirmed receipt of the landlord's evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel a One Month Notice to End Tenancy for Cause?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2011. The tenant pays a subsidized rent for this unit of \$375.00 per month due on the 1st day of each month in advance.

The landlord testified that they served the tenant with a One Month Notice to End Tenancy (the Notice) by posting the Notice to the tenant's door on September 25, 2015. This Notice has an effective date of October 31, 2015 and provided the following reasons to end the tenancy:

- 1) 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,**
- 2) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The landlord testified the tenant has significantly interfered with and disturbed other tenants and staff working in the building. There was an altercation between the tenant and two volunteer women in the community kitchen when the tenant became very angry over a mistake made with a juice box and he became threatening towards the two women staff. A few hours later on the same day complaints were again received about the tenant playing loud music in his unit which disturbed other tenants.

The landlord testified that there have been a significant amount of complaints and warning letters issued to the tenant over the last few years about noise and aggression. One of these related to an assault witnessed against a woman in the entrance of the building. This was caught on camera, the Police were called and the tenant was charged with assault. This shows the tenant has assaulted one other women and made threats against two other women staff. The tenant becomes very angry at times and the two staff members felt sufficiently threatened by the tenant to file a report. The landlord testified that management will no longer tolerate this and want the tenancy to end.

The landlord has provided copies of the incident reports filed over the years and the complaint and warning letters sent to the tenant.

The landlord orally requested that the Notice is upheld and seeks an Order of Possession for the rental unit effective at the end of December, 2015. The landlord testified that he is willing to work with the tenant to extend the time the tenant can have to vacate his rental unit beyond December 31, 2015 as long as there are no further incidents concerning aggressive behaviour or noise.

The tenant testified that he has hearing damage in both ears and is partially deaf so he does have to have his music and TV up loud. The tenant agreed he has received warning letters about noise from his unit and testified that he tries to keep the level down so it does not disturb other tenants.

The tenant testified that he does many good works in the community and protects women, elders and children; so what if he gets angry sometimes. The tenant disputed assaulting another tenant. The woman in question was the tenant's wife and he was charged with assault although he only pushed her with two fingers. The tenant testified that he is now on 18 months' probation. The tenant referred to the incident in the communal kitchen and testified that the two women working there threatened the tenant with their sons saying they would get their sons to beat the tenant up. The tenant testified that everyone is lying about this incident. These women were screaming at the tenant. The tenant agreed he did swear at them and called them fucking cunts and fucking bitches and told them to fuck off.

The tenant's advocate stated that the tenant is working hard on his condition and no one wants to push him into homelessness as this would aggravate his condition. The tenant's advocate stated that it will not be easy for the tenant to find alternative housing on such short notice and requested an extension until January 31, 2015.

The tenant testified that he gets upset and this is taken as him being angry. He does not agree with violence against women and he is being a responsible member of the community.

At this point in the hearing the tenant and advocate left the hearing. I waited a further 10 minutes for them to reconnect to the call but they failed to reconnect in this time and the call was therefore ended.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

With regard to the ground given that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. I am satisfied from the evidence presented that the tenant was warned many times that the level of his music was causing a disturbance to other tenants. The landlord has shown that this level of noise continued over the year's despite the warnings given. This alone is sufficient to warrant an end to the tenancy as the landlord has an obligation to protect other tenant's rights to quiet enjoyment of their rental units.

With regard to the altercations between the tenant and the two female workers in the kitchen; the tenant agreed he did swear at the female workers and was quite explicit in the derogatory words he used towards them. While these words alone would not necessarily be construed as threatening they would certainly be distressful and no member of staff or volunteer should be subjected to this kind of verbal attack.

With regard to the tenant's attack of another female, this matter has been dealt with through the courts; however, I must accept that this incident and the incident with the

two female workers in the kitchen does show the tenant has a tendency towards angry outbursts that could be construed as aggressive .

With regard to the landlord's reason that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable period; as the tenant has been sent many warning letters about noise and his behaviour in the building I find the tenant has not necessary modified the noise levels coming from his unit as further complaints have been recorded and further warning letters sent. Furthermore, the tenant has not moderated other behaviours which he knows are unacceptable in the building as it is documented under clause 23, concerning conduct, in his tenancy agreement.

Accordingly I find the reasons given on the Notice are upheld and the tenancy must end. Consequently, the tenant's application to cancel the Notice is dismissed. To this end I refer the parties to s. 55 (1) of the *Act* which states:

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.

The landlord has orally requested an Order of Possession. Having upheld the Notice to End Tenancy I will grant that Order. The effective date on the Notice to End Tenancy in this matter is October 31, 2015. However, the landlord has agreed to extend the effective date of the Notice to December 31, 2015. I therefore grant the landlord an Order of Possession effective on that date.

Conclusion

I HEREBY dismiss the tenant's application without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective at 1.00 p.m. on December 31, 2015. This Order must be served on the tenant, if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: December 02, 2015

Residential Tenancy Branch

