



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: CNC OPC

Introduction:

This hearing was convened due to an application by the tenant to cancel a Notice to End the Tenancy for cause dated October 5, 2015 to be effective November 30, 2015. Both parties were present at the hearing and confirmed the Notice to End Tenancy was served by posting it on the door and the tenant's application by registered mail.

Issues: Has the landlord proved on the balance of probabilities that there is good cause to end the tenancy or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began October 14, 2011, the current rent is \$794 plus \$25 parking and the tenant paid a security deposit of \$389. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- b) Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord said their function is to provide affordable housing for vulnerable people and it is not in their interest to evict tenants. However, they have had many complaints about the noise of this tenant from unrelated tenants who corroborate each other. The noise frequently occurs between 11 p.m. and 7 a.m. According to accounts it is shouting, crying, stomping and moaning for extended periods of time. Breach letters have been sent to the tenant without changing the situation. Now, in good conscience, they cannot rent the unit below her because the two previous tenants said they had to leave due to the noise. In evidence are 14 complaints filed in 2014 and 10 in 2015. There is also a transfer request from a tenant above this tenant citing the noise as the problem. There are many warning letters and office memos also concerning the problem.

The tenant agreed she had a significant period of grief and hurt over losing her brother and a painful infection. She said her brother died January 2014 and the noise stopped in April 2014. She said she was unaware of all the complaint letters and actually made friends with a tenant above when she moved in and told her to tell her if there were problems. She never heard of any problems from her. She said she got the warning letters but the latest one did not apply to her as another tenant banged on the floor for help and an ambulance and Police attended about 1 a.m. in the morning. She said it is a wooden building and sound travels. She said the landlord does not investigate other noise complaints. She said the man downstairs yells and screams untrue allegations and she had to call the Police and live with her son for two days after she removed her air conditioner. She said the Police noticed the level of noise from upstairs.

The landlord said they did not share emails with the tenant but met and talked with her twice and sent breach and warning letters. The lady below was scared and moved and the lady above also. She said a new tenant moved in below in September 2015 and already moved out after complaining within days of the noise. They pointed out that most of the complaints are after April 2014 and although the tenant said she was cleaning the ceiling, she admitted at the time she was hitting the ceiling to kill silverfish. The tenant said there was only one meeting and another time, she gave her Doctor's note to the landlord but there was not a sit down meeting. After I discussed the evidence with the parties, they negotiated a move-out date of January 31, 2016 and the landlord requested an Order of Possession for that date.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes it.

Although the tenant's advocate did an able job of advocating for the tenant and questioning the landlord, I find the landlord has satisfied the onus of proof on a balance of probabilities that they have good cause to end this tenancy. Although the tenant voiced concerns regarding other tenants, I find the preponderance of the evidence supports the landlord's reason to end the tenancy for cause. I find the majority of complaints are in respect to the tenant's ongoing noise and often between 11 p.m. and 7 a.m. I find the multiple complaints and evidence of other tenants is persuasive. Although the advocate suggested a duty of the landlord to meet and negotiate with the tenant concerning the noise complaints, I find no such duty in the Act. I find the landlord's evidence credible that they met with her twice and sent her many warning letters (provided in evidence) but the behaviour did not change.

I find this noise of the tenant is significantly interfering and unreasonably disturbing other residents. I therefore dismiss the tenant's application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 47 and has upheld the Notice. The landlord has made this request at the hearing. As a result I grant the landlord an Order for Possession.

Conclusion:

I granted the landlord an Order for Possession effective January 31, 2016 as agreed by the landlord. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application without recovery of the filing fee due to her lack of success.

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 16, 2015

Residential Tenancy Branch

