



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenants, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for cause. The tenants applied for an order to cancel the notice to end tenancy. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy at this unit started in 1991. The current monthly rent is \$465.00 payable on the first of each month.

In 1994, the tenant started doing some janitorial duties for the landlord which increased with time. Due to issues with the tenant's employment, on November 11, 2015, the landlord gave the tenant a letter of immediate dismissal. The tenant spoke with the landlord and the letter of dismissal was rescinded. The landlord's witness stated that the tenant threatened the landlord. The tenant stated that he informed the landlord that he would be filing a grievance with the labour board and did not utter threats of violence.

On December 16, 2015, the landlord issued a notice to end tenancy for cause with an effective date of January 31, 2016, by posting the notice on the tenant's front door.

The tenant stated that he received it on December 19, 2015. The tenant applied to dispute the notice in a timely manner.

The reasons for the notice are that the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord, has seriously jeopardised the health or safety or lawful right of another occupant or the landlord and has put the landlord's property at significant risk.

The landlord stated that complaints were received in writing from the occupants of units 1 and 4. The letters of complaint were filed into evidence and state that the tenant screams obscenities inside his unit at various times in the early morning. For the period of November 05, 2015 to December 08, 2015, there were six incidents of noise disturbances coming from the tenant's unit.

The tenant did not deny the allegation. He stated that he was extremely upset when he received the letter of immediate dismissal that he vented out loud. He also agreed to having vented loudly on other occasions too. During the hearing the tenant was apologetic and agreed to ensure that this activity would cease immediately.

The letters also mention that the tenant rattles windows and slams doors. The tenant stated that during a week in November, there was a wind storm which resulted in these types of noise disturbances.

The landlord's witness who is also the property manager testified that on October 31, 2015, the tenant was rude to her via text messages, emails and phone conversations while he attempted to convince her to evict one of the other occupants of the building. The witness also stated that there were police incidents that involved the tenant. The landlord did not file documentary evidence to support the testimony of the witness.

On December 15, 2016, the landlord served the tenant a letter informing him that his employment was terminated as of January 31, 2016 and that he was required to move out of the rental unit, on that date. The landlord agreed that no warning letters other than the letters regarding the tenant's employment were served on the tenant.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord, has seriously jeopardised the health or safety or lawful right of another occupant or the landlord and has put the landlord's property at significant risk.

Based on all the evidence before me and the sworn testimony of the landlord, her witness and the tenant, I find that the tenant did create noise disturbances during the early hours of the morning by screaming and yelling obscenities, during the period of November 05 to December 08, 2015.

I further find that the tenant was not notified of the complaints made by other tenants and was not given any written warnings that such behaviours were unacceptable. Therefore, I find that since the tenant was not put on notice regarding his disruptive and unacceptable behaviour, he was not given an opportunity to correct this behaviour. I also find that during this long term tenancy, prior to this notice to end tenancy, the tenant has not provided the landlord with reason to end the tenancy.

I therefore allow the tenants' application and set aside the landlord's notice to end tenancy dated December 16, 2015. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving the landlord and the other occupants of the building, reason to complain about noise disturbances. I find it timely to put the tenant on notice that, if these alleged behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Since the landlord has not proven her case, she must bear the cost of filing her application. The notice is set aside and therefore the tenant is entitled to the recovery of the filing fee. The tenants may make a onetime deduction of \$50.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: February 12, 2016

Residential Tenancy Branch