



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC CNLC RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47; and an order for repairs to the rental unit pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord provided contact information for 4 witnesses however only 3 were able to be contacted during the course of the hearing. All parties agreed upon allowances for the 4th witness to submit his testimony in writing to the Residential Tenancy Branch and the tenant. The tenant was permitted to provide a response to the submission, if he chose to do so. The landlord confirmed receipt of the tenant's application for dispute resolution hearing package delivered personally by the tenant. The tenant confirmed receipt of the landlord's evidentiary materials submitted for this hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order for repairs to the rental unit?

Background and Evidence

Both parties agreed that this tenancy began on or about September 30, 2014 as a month to month tenancy. The rental amount of \$375.00 is payable on the first of each month. The landlord testified that he continued to hold the \$187.50 security deposit paid by the tenant at the outset of this tenancy. A copy of the residential tenancy agreement was submitted after this hearing. The building rules were also submitted by the landlord. The rules include "no unreasonable disturbances" and no loud noise after 10pm weekdays and 11pm on Saturdays. The landlord also submitted a copy of a "Final Noise Violation" dated January 15, 2015. That letter to the tenant stated, "It is unacceptable to bang on the walls and yell, especially at 3am. Continuation of such actions will not be tolerated."

On November 21, 2015, the landlord posted a 1 Month Notice to End Tenancy on the tenant's rental unit door. In that Notice, requiring the tenant to end this tenancy by December 31, 2015, the landlord cited the following reasons for the issuance of the Notice:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that the second reason on the 1 Month Notice to End Tenancy was included in error. The landlord testified that he relies solely on the ground that the tenant has permitted a person on the residential property that has significantly interfered with and unreasonably disturbed other occupants of the premises. Specifically, the landlord testified that the tenant has allowed a woman on the premises on a regular basis who has been both loud and disturbing in her behaviour on the premises.

The tenant applied to dispute the Notice to End Tenancy on December 1, 2015, within the timeline to make an application to dispute a 1 Month Notice. The tenant testified that he did allow woman, a female guest on the premises who was disruptive. However, he testified that he no longer allows that woman on the property and she will not be returning.

Three witnesses testified on behalf of the landlord. Witness GS is the property manager at the residential premises. He testified that he receives regular verbal complaints from a variety of occupants within the premises regarding the tenant and his female guest. He testified that he has received these complaints with respect to the tenant and his female guest over the past year. He testified that he has talked to the tenant about his and his guest's behaviour on several occasions. He also testified that, beyond the behaviour of his female guest, the tenant can be disruptive as well. He testified that the tenant is often intoxicated outside of his rental unit and that, when he is he is usually wearing only underwear. He testified that his observations as well as his information from other occupants are that the tenant is very noisy at all hours of the evening.

Witness KR testified that he resides "upstairs and down the hall" from the tenant. He testified that the tenant's female guest comes and goes as she pleases. He testified that, on one occasion he found her having sexual relations in the hallway of the residential premises. He testified that from his unit, he often hears loud conversations between the tenant and his female guest. He testified that he also hears knocking on the tenant's door at late hours. He stated he is often disturbed by the comings and goings of this guest of the tenant's.

Witness DR testified that she resides in the unit below the tenant. She testified that she frequently hears a female guest in his rental unit. She testified that she hears noise, yelling and sexual activity at the very early hours of the morning.

Witness MF was unable to remain on the line to testify at this hearing. However, he submitted a letter for consideration in this hearing. In it, he states; that he resides next door to the tenant; that the tenant's female guest does not respect the other occupants of the residence; he

describes yelling and other noises; he describes witnessing sexual activity being performed in the hallway; he states that the tenant's lifestyle "encroaches on his neighbours, and we should not have to endure it."

The tenant testified that his unit is poorly insulated. He testified that he is seeking repairs to the unit so that he does not disturb other tenants and so that his heating bill can be reduced. He testified that he has taken steps to address the other occupants' disturbances. He testified that he has asked female guest to leave and not return. He testified that, since she stole from him on January 5, 2015, she has not returned and he does not believe that she will return. He testified that previous attempts to keep her from returning were difficult because the lock on the front door was broken and so she did not need a key to enter. The fact that the front door lock was broken was confirmed by the landlord, the property manager and the two witnesses testifying at this hearing. He also testified that he has a girlfriend who also attends to the rental unit. He believes that some of these complaints involve the girlfriend and not the "female guest".

Witness GS, the property manager acknowledged that he is aware that the tenant has asked the female guest not to come back to the residence. Witness KR also acknowledged that the tenant has "banned her" from the building but stated that she keeps coming back, that "he can't control her". Witness DR testified that she recently spent some time in the hospital and has noticed that it has been quieter since her return.

There was no evidence presented by the landlord that the tenant's female guest had returned to the residential property since the front door lock had been changed. However, the landlord and the property manager both testified that there have been further noise complaints in recent days. The landlord referred to the "Final Noise Violation" letter to indicate that, as recently as January 15, 2015, there were noise complaints relating to the tenant's rental unit.

Analysis

The landlord relied on section 47(1)(d)(i) of the *Act* to end this tenancy; that the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. While the landlord and his attending witnesses provided testimony that described interference or disturbance by the tenant's female guest in previous months, I find that the (former) "female guest" is no longer permitted on the residential property by the tenant. However, I cannot ignore the recent noise violation from the landlord to the tenant and the witness testimony indicating that the tenant himself causes substantial noise and disruption.

The tenant's testimony that he had asked the female guest to leave the property and not return was not disputed by the landlord or property manager. However, his own testimony referenced other guests. The testimony of the witnesses and the property manager reference the tenant's own problematic behavior, including excessive noise and disturbance of other occupants of the residential premises.

Based on the tenant's evidence, I am satisfied that the landlord has sufficient grounds to obtain an end to this tenancy for cause. Therefore, I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy. Pursuant to section 55 of the *Act*, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy and the tenant's application is dismissed, an arbitrator may grant an order of possession to the landlord. Therefore, I grant an order of possession to the landlord dated February 29, 2016.

With respect to the tenant's application for repairs to his unit, I do not find that the tenant presented sufficient evidence of a lack of insulation in his rental unit sufficient to support his application. Further, as this tenancy is at an end, the request for insulation is moot. Therefore, I dismiss the tenant's application for repairs to the unit.

Conclusion

I dismiss the tenant's application to order repairs to the rental unit.
I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy.

I grant the landlords an Order of Possession dated February 29, 2016. If the tenant does not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 3, 2016

Residential Tenancy Branch

