



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing and the landlord was permitted to provide additional evidence in the form of the Notice to End Tenancy after the hearing had concluded. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The tenant testified that since moving to BC her sister (the landlord) was acting as the tenant's advocate due to the tenant's disability suffering from depression and anxiety. The tenant requested an adjournment to attempt to find a new advocate for this hearing. Upon considering the tenant's request for an adjournment I find the tenant had filed this application on February 29, 2016 and should have known due to the acrimonious relationship between her and her sister that her sister would not be acting as her advocate for this proceeding. The tenant therefore had ample time to find an alternative advocate and failed to do so prior to the hearing. I feel that due to the nature of the

application that it would be prejudicial to the landlord for me to allow an adjournment of the hearing pursuant to the Residential Tenancy Branch Rules of Procedure, rule 7.9. The format of the hearing was explained to the parties. At one point the tenant did become emotional during the hearing and time was given to the tenant to compose herself and present her evidence.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2014. The landlord rented this single family home from her landlord and lives in the upper portion of the home with her parents. The tenant and landlord are sisters and the tenant sublets the lower portion of the home from her sister (her landlord). The tenant pays a monthly rent of \$790.00 including utilities. Rent is due on the 1st of each month.

The landlord testified that the relationship between the tenant and the rest of the family broke down in January 2015. Since that time the tenant keeps saying she is going to move out and the landlord even returned her security deposit in July 2015 as the tenant stated she needed it to find new housing. In July, 2015 things became much worse and the tenant posted inflammatory comments about the landlord on Facebook. The landlord feels this is a personal attack against her.

The landlord testified that there have been other incidents between the tenant and their father who lives upstairs with the landlord. On one occasion the tenant threw an object at her father and there have been nasty incidents between them with the tenant shouting abuse at the landlord. The landlord referred to her documentary emails, copies of Facebook messages and text messages left by the tenant. The landlord testified that these are all defamatory. The landlord testified that she served the tenant with a One

Month Notice to End Tenancy for Cause (the Notice) on February 22, 2016. The Notice has an effective date of March 31, 2016. The Notice was posted to the tenant's door and provided the following reasons to end the tenancy:

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.

The landlord testified that the tenant has also made other comments and posted a copy of the One Month Notice to End Tenancy on Facebook with all the landlord's personal details. The landlord feels this could have a potential effect on her safety and gives cause for concern of identity theft with her address, signature and phone number being in the public domain.

The landlord testified that the tenant has allowed another occupant to reside in her rental unit and this person who is the boyfriend of the tenant's daughter has informed the landlord that he is staying there and paying rent to the tenant. This person was advised that the tenant is not allowed to have sublets; however, he has continued to live there.

The landlord testified that in addition to these things the smell of marijuana smoke can be smelt in the landlord's unit and is related to the tenant's daughter's boyfriend. The landlord testified that she does not want herself, her children or her parents exposed to this harmful and illegal substance. The landlord requested an Order of Possession and is willing to extend the date the tenant must vacate to May 31, 2016.

The tenant disputed the landlord's claims. The tenant testified that there have been many arguments between them and on one occasion she did throw a dish at her father as he had physically abused the tenant in the past. It is her father who makes problems; for example the tenant shared a car with her mother and one day her father disabled the

car so the tenant was not able to go to the food bank. Her mother told the tenant her father was coming downstairs in a rage so the tenant had to tie rope around her door to prevent him getting in.

The tenant agreed she did post comments on Facebook about the landlord and did post a copy of the Notice to End Tenancy; however, claims that this was later taken down. The tenant testified that by telling the landlord to leave her alone this cannot be considered bullying or harassment and is just the tenant's desire to be left alone. The tenant testified that no one is happy with the living arrangement but as the tenant previously suffered from identify theft she now has a bad credit rating and is finding it hard to find alternative accommodation.

The tenant disputed that she smokes marijuana and although she has a card for the medical use of this substance she does not smoke it but rather uses a vaporiser. The tenant testified that she can smell cigarette smoke and pot in her basement unit but there is also a halfway house next door this could be coming from.

The tenant agreed that her daughter's boyfriend has been staying with them for four to five weeks while he is waiting to move elsewhere; however, the tenant testified that he does not pay rent but only buys food.

The landlord asked the tenant if the tenant's identity had been previously stolen why the tenant put the landlord's personal information up on Facebook leaving the landlord open to identity theft. The tenant responded she took the Notice down. The landlord asked the tenant if her daughter's boyfriend smokes marijuana in the parking area. The tenant responded that he had told the tenant that he goes to his car to smoke it or outside. The landlord asked the tenant why her daughter's boyfriend told the landlord he was paying rent. The tenant responded that he doesn't pay rent she just cooks for him. The landlord asked the tenant about her comments about their father physically abusing her and if it was so bad why did the tenant move in with them. The tenant responded that she moved to BC and left everything behind because the landlord was going to help her. The tenant testified that she is afraid of her father and his threats.

Analysis

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.

It is clear that the relationship between the parties is acrimonious and has broken down to the extent that each party cannot communicate with the other. What I must first consider when making this decision is if there is sufficient evidence to show that the tenant's actions have significantly interfered with or unreasonably disturbed the landlord and the parents of both parties who are other occupants of the upper unit and whether the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I have considered all the evidence before me and find the content of the tenant's emails, and messages are filled with foul language and are combative and could be construed to be inflammatory; however, I do not find the tone to be particularly aggressive or harassing in nature and the messages are more in line with a family conflict. This alone would not warrant an end to the tenancy. What I do find worrying is that the tenant has taken this family dispute into the public arena by posting defamatory comments and a copy of the One Month Notice on social media, namely Facebook, which could have potentially left the landlord at risk of identity theft or other defamatory comments. Furthermore, the tenant agreed that she has thrown an object at her father and heated exchanges have taken place between them this is also troublesome. As an occupant of the landlord's rental unit the father of the tenant and landlord has a right to peaceful enjoyment and for whatever reason the tenant has a difficult relationship with her father these reasons cannot spill over into her tenancy. It is clear from the testimony provided

that the relationship between the tenant and the landlord and the tenant and her father will remain acrimonious. It is my decision that the landlord has met the burden of proof that the tenant's actions have significantly interfered with or unreasonably disturbed the landlord and the parents of both parties who are other occupants and therefore I have no option but to uphold the Notice and dismiss the tenant's application to set the Notice aside.

As I have dismissed the tenant's application I therefore issue an Order of Possession to the landlord pursuant to s. 55(1)(b) of the *Act*.

Conclusion

The tenant's application is dismissed without leave to re-apply.

The landlord has been issued an Order of Possession effective on **May 31, 2016** pursuant to s. 55(1)(b) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia 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: April 18, 2016

Residential Tenancy Branch