



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUSSEX REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF – Landlord’s application
 OLC O SS FF - Tenant’s application
 CNC – Tenant’s amended application

Introduction

This hearing was originally scheduled to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on February 29, 2016. The Tenant filed seeking an order to have the Landlord comply with the *Act*, Regulation, or tenancy agreement; for other reasons; for substitute service of documents and to recover the cost of the filing fee.

On March 30, 2016 the Tenant filed an Amended Application for Dispute Resolution to include a request to cancel a 1 Month Notice to end tenancy issued for cause. The 1 Month Notice was served upon the Tenant on March 23, 2016, approximately three weeks after she served the Landlord with her Notice of hearing documents.

The Landlord filed an Application for Dispute Resolution on April 4, 2016. The Landlord filed seeking an Order of Possession for cause relating to the 1 Month Notice issued March 23, 2016; and to recover the cost of the filing fee. The Landlord’s application was not originally scheduled to be heard as a cross application with the Tenant’s applications due to service requirements.

I informed both parties that I would be making findings regarding the 1 Month Notice issued March 23, 2016, in this Decision, based on the Tenant’s amended application. If I find the 1 Month Notice is to be cancelled the Landlord’s application would be moot. If I upheld the 1 Month Notice and dismiss the Tenant’s request to cancel the Notice, section 55 of the *Act* stipulates that I must issue the Landlord an Order of Possession; in which case the Landlord’s application would also be moot. Therefore, I informed both parties that I would be joining the Landlord’s application to be heard in this hearing with the Tenant’s application.

Each person was given the opportunity to make submissions regarding my decision to join the applications. No submissions or arguments were presented and I proceeded to hear matters relating to both applications.

The hearing was conducted via teleconference and was attended by 3 Agents for the corporate Landlord, (the Landlords), both Tenants, and the Tenants' Advocate. Each person gave affirmed testimony. The Tenant's application listed only the female Tenant as applicant. Despite both Tenants being present at the hearing and each being given the opportunity to present evidence, the female Tenant presented all the evidence on behalf of the Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On a procedural note, two Agents for the Landlord were present at the start of the scheduled teleconference hearing. Several minutes into the hearing the hearing was interrupted twice by the Landlord's Agent's assistant indicating a third Agent for the Landlord could not gain entry into the hearing from another Province. I informed the Landlords that they were well represented at the hearing, having the resident manager and the compliance clerk present. I then explained to the Landlords that it was their responsibility to ensure they could attend the hearing at the scheduled time and ought to have worked out their telephone issues prior to the start time of the hearing. I also advised the Landlords they were not to continually interrupt the hearing regarding this issue.

At one point I attempted to dial the third Agent into the hearing at 9:16 a.m. in attempts to stop the interruptions of the hearing. However, the telephone number provided to me by the Landlord would not connect to the teleconference. I informed the Landlords that I would not stall the hearing any further and I continued to hear the Tenant's submissions. At 9:26 a.m. the Agent's assistance interrupted the hearing again to state they were adding the third Agent to the hearing by joining him to the other Agent's call. He was added and the hearing continued.

Rule of Procedure 6.10 stipulates, in part, disrupting the hearing will not be permitted. A person who does not comply with the arbitrator's direction may be excluded from the

dispute resolution hearing and the Arbitrator may proceed in the absence of that excluded party.

After consideration of the above, I feel it necessary to caution the Landlords that if they are scheduled to attend a teleconference hearing in the future, they must ensure they are able to attend the hearing at the scheduled time and not continually interrupt the proceeding with attempts to access the conference. Failure to comply may result in the Landlord being excluded from the hearing, pursuant to Rule of Procedure 6.10.

The Tenant affirmed she served the Landlords with copies of the same documents that she had served the RTB. The Landlords acknowledged receipt of these documents and no issues regarding service or receipt were raised. The Landlords did indicate the photographs were dark and hard to see. As such, I accepted the Tenants' submissions as evidence for these proceedings and will determine the issues regarding the legibility of the photographs in my analysis if needed.

The Landlords affirmed that they served the Tenants with copies of the same documents that they had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's submission as evidence for these proceedings.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy be upheld or cancelled?

Background and Evidence

The Landlord and Tenants entered into a written month to month tenancy agreement that began on April 1, 2012. Rent of \$840.00 was due on or before the first of each month and has subsequently been increased to \$861.00 per month. On February 28, 2012 the Tenants paid \$420.00 as the security deposit and on April 1, 2012 she paid \$100.00 as the pet deposit.

The Tenant's original application was submitted to the Residential Tenancy Branch (RTB) on February 29, 2016 seeking assistance to resolve issues with her Landlord (B.D.). She wrote the following in the Details of the Dispute on her application:

Ongoing harrassement since Nov-10-15, I've photocopied everything for you to see. Under section 28-1 I should live without all this carp. I have talked to police they said call you

[Reproduced as written]

The Tenant testified she began having problems with her Landlord (B.D.) after her daughter and grandson moved out of the building on October 31, 2015. She stated her daughter and grandson had lived in a different apartment under a separate tenancy agreement. When her daughter moved out her daughter had left the rental unit dirty which caused the Landlord (B.D.) to be upset.

The Tenant stated B.D. and his wife treated her daughter and grandson very well, often feeding her grandson soup. The Tenant said she understands why they would be upset at her daughter after the care B.D. and his wife had shown her daughter and then her daughter leaving her rental unit dirty.

The Landlord served the Tenant a 1 Month Notice to end tenancy on March 23, 2016, after the Tenant filed her application for Dispute Resolution.

The 1 Month Notice was issued on March 23, 2016, pursuant to Section 47(1) of the Act, listing an effective date of April 30, 2016 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Landlord (B.D.) began the submissions on behalf of the Landlords and testified the Tenant was issued the Notice to end tenancy because of the "Tenant's drug dealings". Upon further clarification B.D. stated he has had knowledge that the Tenant has been selling drugs out of her rental unit for approximately 2 years. He said he contacted police and they told him the situation was too minor and they did not have time to deal with it. He asserted there was never a police file created for his complaint because the issue was too minor. B.D. alleged he had verbal evidence from another tenant which confirmed the Tenant was selling drugs. He also spoke about the amount of traffic that had been coming and going from the Tenants' apartment during these past two years.

B.D. sated he had submitted written evidence of another tenant, his wife, overhearing a conversation he had with the Tenant in the laundry room. B.D. said he told the Tenant

he knew she was selling drugs and his wife over heard the Tenant say "yes, why don't you call the cops".

B.D. referenced photographic evidence of Christmas decorations that were hung on the Tenant's door and on the walls in the hallway. He asserted that when he respectfully asked the Tenant to remove the decorations the Tenant swore and yelled at him so loudly that a tenant down the hall heard her. B.D. argued the Tenant has shown him no respect as the building manager to the point that he can no longer enjoy himself.

The Landlord (K.C.) asserted B.D. was unable to articulate the basis of their complaint. K.C. submitted the 1 Month Notice was served upon the Tenant due to the Tenant's refusal to listen to B.D.'s direction and the Tenant's harassment of B.D. K.C. argued tenants are not to be yelling, swearing, or being abusive towards landlords as landlords have the right to a safe and respectful workplace.

K.C. submitted they do not have solid evidence to prove the Tenant is trafficking drugs. They do have photographic evidence which shows the Tenant had placed decorations on the walls and not just her door; which the Tenant failed to remove when given a warning letter instructing her to do so. K.C. asserted the Tenant has created a situation that has made it too stressful for B.D. to deal with her. He reiterated that B.D. had requested the removal of the decorations in a considerate manner and the Tenant responded by yelling and swearing at B.D.

The Tenant confirmed the Landlord had asked her in the laundry room if she was selling drugs sometime prior to her daughter moving out. She said she thought it was funny and told the Landlord to go ahead and call the cops because she was not selling drugs. She asserted she had always hung decorations up for every season since moving into the building back in 2012. She stated she received the request to remove the decorations in November 2015, shortly after her daughter moved out.

In addition to the above, the Tenant stated that on November 26, 2015 the Landlord knew her daughter was in the elevator and he turned the power off locking her daughter inside the elevator because he was still upset with the fact her daughter had move out leaving her rental unit dirty.

I asked B.D. what evidence the Landlord had submitted that would support the Tenant or a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

B.D. replied stating he had received numerous complaints from other tenants regarding the constant traffic of people coming and going to the Tenant's rental unit. He clarified by stating there are noise complaints against the Tenant regarding the number of people at her unit at all hours of the day and night. B.D. stated the noise complaints also involved times when the Tenant's daughter, who lived two floors below the Tenant, would stand on her balcony and yell at the Tenant who was standing on her balcony, which caused disturbances to neighbours.

B.D. confirmed he had turned the elevator switch off on November 26, 2015. B.D. argued that they had been having problems with the elevator and he was instructed, by the elevator repair technician, to turn it off and on if he felt it was acting up. He asserted he thought he heard someone having problems in the elevator so he did what he was instructed to do by the elevator repair company. No documentary evidence was submitted to support an elevator technician attended the rental unit or told B.D. to turn the power off to the elevator.

The Tenant's Advocate (the Advocate) testified she attempted to work with the Landlords to resolve this situation prior to the Tenant filing her application for Dispute Resolution. The Advocate stated she spoke with K.C. before Christmas 2015 and informed him that they were violating the *Act*. She stated the Landlords she spoke too acknowledged to her that they were not familiar with the B.C. *Act* as their offices were located in a different Province.

The Advocate asserted other tenants began contacting her to advise her there were problems with the Landlord's evidence. She said she continued to try and work with the Landlord's Agents; however, her telephone messages were not returned.

The Advocate argued the Landlords were not investigating B.D.'s actions to determine if they were appropriate, in accordance with the law here in B.C. She asserted B.D. has displayed harassment towards women.

The Tenant's witness testified she has lived in the rental unit across the hall from the Tenant for 19 years. She stated the Tenant has had decorations on her door over the past several years. The witness could not recall if the decorations used to be on the walls for several years; however, she did recall there was one year when they were on the wall. The witness stated she has never complained about noise from the Tenant's apartment.

The Landlord (K.C.) confirmed speaking with the Advocate and argued that the complaints of harassment from B.D. were "ill founded".

The Landlord, B.D., asserted the fact the Tenant's daughter moved out at the end of October 2015 is simply a coincidence and was not related to the Tenant being served a notice to end tenancy. B.D. then started submitting random reasons for why the Tenant should be evicted which included: "she has bed bugs; she has insects in her unit; if you are being harassed you have an axe to grind; there are lots of reasons to evict her as I had to respond to her complaints".

In closing, the Tenant stated she never admitted she was selling drugs; she simply told the Landlord to call the cops if he thinks she is selling drugs. The Tenant acknowledged that she responded inappropriately to the Landlord and stated she felt she was being harassed at the time. She stated that since these events have been going on someone called the Ministry about her. She said she and her four grandchildren all had to be interviewed to ensure her grandchildren were safe when she babysat them. She argued the Ministry did not determine something anything wrong and she was able to continue to babysit her grandchildren.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Upon review of the 1 Month Notice to End Tenancy issued February 16, 2015, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the Landlord need only prove one of the reasons.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

In this case, the evidence submitted by the resident manager, B.D., included arguments that the Tenant had been selling drugs and has had numerous alleged guests at all hours of the day and night during the past two years.

I favored the Tenant's submission that the issuance of the March 23, 2016 Notice was linked to the manner in which the Tenant's daughter left her rental unit at the end of the Tenant's daughter's tenancy. I favored the Tenant's submission in part due to the fact that the totality of the Landlord's documentary evidence came into existence shortly after the Tenant's daughter moved out on October 31, 2015.

Although B.D.'s written statement states it was in September 2015 that his witness overheard his conversation with the Tenant about him knowing the Tenant was selling drugs, there was no action taken to document that alleged conversation or take action against the Tenant at that time. Rather, the Landlord waited until after the Tenant's daughter moved out to take action against the Tenant.

Based on the above, I find the Landlord is estopped at this time from evicting the Tenant on the allegation the Tenant has been selling drugs or has had numerous guests at all hours of the day and night. I make this finding in part because there was insufficient evidence to prove the Tenant was selling drugs and, by the Landlord's own submissions, the alleged inappropriate behaviors have been allowed to go on for over two years.

The Landlord M.C., who resides in a different Province, submitted different evidence as to why the 1 Month Notice to end tenancy was issued. M.C. stated the reason related to the manner in which the Tenant responded to B.D.'s requests to have the Tenant remove decorations from the common hallway walls and the exterior of the Tenant's door.

While I agree the Tenant's choice of words to the Landlord were inappropriate, I must consider that one event in the context of the events leading up to that date. I accept the evidence that the Tenant has hung decorations on the outside of her door for various different occasions since moving into the rental unit in 2012. I must then consider that there was insufficient evidence to prove the Landlords took previous actions regarding the Tenant's decorations. Accordingly, I find the Landlord is estopped from evicting the Tenant for having decorations on the exterior of her door.

I accept the Landlords' evidence that the Tenant had hung decorations on the walls in the common hallway in November 2015. After consideration of the lack of action taken by the Landlords in previous years, and in the presence of the Witness's testimony that she is not disturbed by this Tenant or her actions, I find there was insufficient evidence to prove the Tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord simply by hanging decorations on the wall.

Overall, I find there was insufficient evidence to prove the reason listed on 1 Month Notice issued March 23, 2016. Accordingly, I uphold the Tenant's application and I cancel the 1 Month Notice issued March 23, 2016.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Tenant may deduct the one time award of **\$100.00** from her next rent payment to fully recover the cost of the filing fee. In the event the Tenant pays her rent in a manner that does not accommodate that deduction from rent, the Tenant has been issued a Monetary Order for **\$100.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Based on the above, I find the Landlord submitted insufficient evidence to prove the merits of their application for Dispute Resolution. Therefore, the Landlord's application is dismissed, without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of their filing fee, pursuant to section 72(1) of the Act.

There was sufficient evidence to prove this landlord/tenant relationship has become adversarial. That being said, I must caution both the Landlords and the Tenants the record of this decision may form part of any future cases should there be sufficient evidence, in the future, of either the Landlords or the Tenants acting in breach of the *Act*. That being said, I would recommend both parties learn their rights and obligations as provided for by the *Act*.

Conclusion

The Tenant was successful with her application and the 1 Month Notice issued March 23, 2016 was cancelled and is of no force and effect. The Tenant's tenancy continues until such time as it is ended in accordance with the *Act*.

The Landlords were not successful with their application and it was dismissed, without leave to reapply.

This decision is final, legally binding, and 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 21, 2016

Residential Tenancy Branch