



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC ERP RP FF

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause, as well as for monetary compensation and orders for repairs and emergency repairs. The tenant, the landlord and the landlord's agent all participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence, with the exception of a disk of digital evidence submitted by the tenant. The landlord stated that she did not receive this evidence. The tenant stated that she served the disk through the landlord's doggy door. As the tenant did not serve the disk in a method permitted by the Act, I did not admit or consider that evidence.

The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I note that the evidence did not suggest any matters requiring emergency repairs. I will address the remainder of the tenant's application in the conclusion of my decision.

Issue(s) to be Decided

Is the notice to end tenancy for cause dated May 11, 2016 valid?

Background and Evidence

The tenant resides in a rental unit in a multi-unit wood-frame building.

On May 12, 2016 the tenant received from the landlord a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Landlord's Evidence

The landlord stated that she received numerous complaints from the tenant living in the unit above the tenant's unit. The upstairs tenant complained that the tenant would come up and complain about noise and she would bang on her ceiling. The landlord stated that she asked the upstairs tenant to do what she could to be quiet. The landlord stated that the tenant was getting more and more aggressive, and the upstairs tenant gave notice and moved out. The landlord submitted a copy of the upstairs tenant's notice to vacate, in which she indicated that her primary reason for moving out was the tenant's unreasonable behaviour toward her.

Two new tenants moved into the upstairs unit on January 1, 2016. The landlord stated that shortly afterward the exact same issues began between the upstairs tenants and the tenant. The landlord stated that she received multiple complaints from the upstairs tenant that the tenant would come to their suite and yell at them for stepping too loudly and call them names. The landlord stated that she tried to discuss this issue with the tenant, but the tenant yelled at the landlord and got incredibly hostile.

The landlord stated that on April 7, 2016 the tenant exhibited hostile behaviour toward the upstairs tenants and called them names. The landlord stated that on April 9, 2016 the tenant again went up to the upstairs tenants' unit and screamed at them. The landlord stated that the upstairs tenants said the tenant's behaviour was so abusive that they were scared and prepared to call the police. The upstairs tenants also told the landlord that they would move out.

The landlord provided written statements from the upstairs tenants, as well as another tenant, GM, who observed interactions between the tenant and the upstairs tenants. GM wrote that the tenant's actions have "seriously diminished the ability to be comfortable in his own home." GM also indicated that he was considering moving out.

The landlord stated that she called the tenant to discuss the severity of the issue, and again the tenant became verbally abusive toward the landlord. The landlord stated that she has witnessed all of the tenant's behaviours that the other tenants have complained about.

The landlord's boyfriend, who sometimes acts as the landlord's agent and fixes things in the building, gave testimony in the hearing. He stated that he met with the tenant a few times when he went to fix things in her unit. He stated that every time he met with her she was quite intoxicated, had a beer can in her hand, and was quite hostile and aggressive. He stated that he was present when the landlord was speaking to the

tenant on the phone, and he could hear the tenant swearing and screaming. The agent stated that the tenant's demeanour in the hearing was not at all like when he has met her.

Tenant's Response

The tenant denied threatening or harassing anybody. The tenant stated that within two weeks of moving in, she would hear very loud noises. The tenant stated that she contacted the landlord on numerous occasions to express concerns about the noise, but the landlord disregarded the tenant and said there was nothing she could do about it. The tenant stated that the walls in the building seem hollow, and you can hear everything.

The tenant stated that the only time she went to the unit upstairs was when the music was playing loud, she asked the tenant to turn it down. The tenant stated that she never yelled and she may have banged once on the wall, but she never banged on the ceiling. The tenant stated that she had a friend stay with her for a few days in February, and the friend submitted a written statement describing the noise from upstairs as unbearable.

The tenant stated that she talked with the upstairs tenants three times. She stated that she told them "you are loud again, I really need to sleep." The tenant stated that she never called the upstairs tenant a "prick," but she did tell him he walked like an elephant, and as she was walking away she said that she was "fed up with this f-ing shit." In response to the testimony of the landlord's agent, the tenant stated that she just has an occasional beer, she is not an alcoholic.

I note that for most of the hearing the tenant presented her testimony in a very calm, measured voice, to the point where she expressed little to no emotion. Her testimony was focussed almost solely on what she felt was the offending behaviour of the upstairs tenants and her view that the landlord was not taking appropriate steps to correct the problem.

Analysis

Upon consideration of the relevant and admissible evidence, and on a balance of probabilities, I find that the tenant did significantly interfere with or unreasonably disturb other occupants and the landlord. I find that the landlord's evidence is well-supported, credible and consistent. The tenant's testimony, on the other hand, was inconsistent and sounded rehearsed. For example, the tenant stated or implied that she that she never swore or yelled at anyone but also said that she stated within the upstairs tenant's

hearing that she was “fed up with this f-ing shit.” The tenant stated that she complained to the landlord numerous times, but she only went upstairs to complain once. I find it likely that the tenant was extremely angry and “fed up” with the noise that she thought unbearable since nearly the beginning of the tenancy, and she became very aggressive in her response. If the tenant made complaints to the landlord and felt that the landlord was not taking proper steps, she ought to have made an application for dispute resolution rather than taking the matter into her own hands.

I find that as the notice to end tenancy for cause dated May 11, 2016 is valid, the landlord is entitled to an order of possession.

Because the tenant's application to cancel the notice was not successful, she is not entitled to recovery of her filing fee.

Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As the tenancy is ending, I dismiss the tenant's application for repairs.

The tenant's application for monetary compensation is dismissed with leave to reapply.

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: July 11, 2016

Residential Tenancy Branch