



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

On August 2, 2016, the Tenant submitted an Application for Dispute Resolution asking for more time to dispute a Notice to end tenancy and that a 1 Month Notice to End Tenancy for Cause dated July 21, 2016 ("the 1 Month Notice") be cancelled.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

Issues to be Decided

Did the Tenant apply on time?
Does the Landlord have Cause to end the tenancy?
Is the Landlord entitled to an order of possession?

Background and Evidence

Both parties testified that the tenancy began on January 11, 2015 on a month to month basis. Rent in the amount of \$546.00 is payable on the first of each month. The Tenant paid the Landlord a security deposit in the amount of \$300.00.

The Landlord testified that the 1 Month Notice was served to the Tenant on July 21, 2016. The Tenant confirmed that she received the 1 month Notice on July 21, 2016.

The Tenant testified that she applied to dispute the Notice on August 2, 2016.

The reasons for ending the tenancy within the 1 Month Notice are as follows:

Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord
- Put the Landlord's property at significant risk

The Landlord testified that the rental property contains 16 units that are situated close to one another. The Landlord testified that she started receiving written complaints about the Tenant in January 2016. She submits that the Tenant had a party on January 12 which resulted in a window being broken at another residents unit. She submits that she received another written complaint from a resident that the Tenant was being excessively noisy until 4:35 am on a school night.

The Landlord testified that as a result of the complaints a warning letter regarding the disturbances of noise and damage was sent to the Tenant in January 2016. The Landlord has provided documentary evidence consisting of the letter of complaints and the warning letter.

The Landlord testified that she received another written complaint regarding the Tenant from another resident in July 2016. The Landlord provided a copy of the written complaint. The complaint letter dated July 21, 2016, states that drunk and high guests of the Tenant have attempted entry into the resident's front door; that there has been loud verbal assaults and shoving resulting in noises of a body hitting walls. The complainant states that the Tenant or the Tenants guests have told her to shut up or they will give her something to deal with.

The Landlord testified that after receiving the complaint letter dated July 21, 2016, she issued the tenant the 1 Month Notice. The Landlord testified that since issuing the Notice, she has continued to receive complaints about the Tenant. The Landlord provided copies of complaint letters from other residents dated July 30, 2016; September 13, 2016.

The Tenant testified that she accepts responsibility for the actions of her guest when the window of another unit was broken. She submits that she was having some drinks with friends when a friend got violent and she asked him to leave. She submits that the friend threw a bottle through the other resident's window. She submits that the friend paid her the money for the cost of the repair and that she paid the Landlord.

The Tenant testified that in July 2016, her brother came over very early in the morning uninvited and he was drunk. She invited him to stay over and sleep on an air mattress but he got upset and started swearing. She submits that she asked her brother to leave and that he left yelling and swearing outside the rental unit.

The Tenant testified that one complainant calls the police on her for anything that happens. She submits that one evening she had family over for dinner at 10 pm at night and they were talking and laughing when the police came to the door because of a complaint. She submits the police had no concerns and left.

The Landlord replied that the complaints she has received regarding the tenant are not just from the complainant that the Tenant testified about. The Landlord submits that another resident has complained, and the complaints involve partying and drinking.

Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant applied to dispute the 1 month notice on August 2, 2016. I find that the Tenant disputed the 1 month Notice within the time frame permitted within the Act.

The Landlord has a duty to protect the quiet enjoyment of all of the occupants in the rental property. I find that the Tenant is responsible for the actions of her guests while they are on the rental property. I find that the guests of the Tenant have engaged in behaviour that has caused damage to the rental property, and has disturbed the quiet enjoyment of other occupants of the rental property. I find the nature of the disturbances involving intoxicated guests yelling and swearing late at night, threatening other occupants, and breaking another occupant's window to be unreasonable disturbances. Consequently, I find that the Tenant has unreasonably disturbed another occupant or the Landlord. The tenancy is over.

I dismiss the Tenant's Application to cancel the 1 Month Notice dated July 21, 2016.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 of the Act, regarding form and content, I must grant the Landlord an order of possession. I find that the 1 Month Notice complies with the requirements under section 52 of the Act.

The Landlord requested that, if she is successful in this hearing, she would like an Order of Possession. The Landlord stated she would agree to give the Tenant an extra month to move out of the rental unit, but she is concerned about future disturbances by the Tenant. The Landlord requested a conditional order of possession that she could serve on the Tenant if there are any further issues involving the Tenant prior to the Tenant vacating the rental unit.

The Landlord was entitled to an order of possession on the effective date of the 1 Month Notice which was August 31, 2016. However, as requested by the Landlord, I grant the Landlord an order of possession effective two (2) days after service on the Tenant. The Landlord agreed to not serve the Order of Possession on the Tenant if the Tenant or the Tenants guests do not unreasonably disturb other occupants of the rental property prior to vacating the unit.

The Landlord agreed to give the Tenant until October 31, 2016, to vacate the rental unit.

The Order of Possession may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application is dismissed. I grant the Landlord an Order of Possession effective two (2) days after service on the Tenant. 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.

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: September 22, 2016

Residential Tenancy Branch