



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witnesses provided evidence under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy started on November 1, 1999. Rent of \$1,200.00 is payable on the first day of each month.

On August 3, 2015 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”).

The Landlord states that on July 25, 2016 the Tenant’s son caused a significant disturbance at the unit resulting in the son being arrested and the neighbours being frightened for their safety. Witness ND, a neighbour of the Tenant, states that as she was coming home to her unit with her two small children she saw the Tenant’s son

outside the Tenant's unit waving a knife. Witness ND states that she went to another unit to call the police and that the son then entered that unit yelling that someone was attacking his mother and that the Witness needed to get the kids upstairs. The Witness states that the son also had bear spray. The Witness states that she and her children went to the backyard where she stayed on the phone with the police until the police arrived at the unit. The Witness states that the son destroyed the inside of the unit. Witness ND states that both her young children have been affected by anxiety as a result of the incident. Witness ND states that about 1.5 years earlier she had heard the son pounding on a wall stating that someone was hurting his mother.

Witness JG, the resident of the unit that was damaged by the son, states that she was not present during the incident but her 18 year old son was present. This Witness states that although her 13 year old daughter was also not present, her daughter, who had known the son all her life, was scared of the son after the incident. This Witness states that the whole community was on high alert for some time after the incident and that things have now calmed down. This Witness states that she has not seen the son since but heard that a neighbour saw the son the next day at the Tenant's unit and reported his presence to the police. This Witness states that the police informed her that the son could only return to the community with a police escort. This Witness states that the son caused about \$500.00 in damages.

The Landlord states that the police met with the community residents on August 4, 2016 and explained the son's terms and conditions of release. The Landlord states that the police informed them that the son's actions were drug induced and that charges were laid. The Landlord states that she is responsible for 20 other tenants and that she had no choice but to issue the eviction notice.

The Tenant states that her 19 year old son lived in the community nearly all his life and just moved into his own place in May 2016. The Tenant states that she was away for the week-end on the date of the incident and that her son was at her unit to feed the cat and likely do laundry. The Tenant states that the police took her son to the hospital

because he was not coherent during the incident. The Tenant states that nothing like this has occurred before and that her son is very remorseful and embarrassed about his behavior. The Tenant states that some of the neighbours showed concern about the son and offered their help. The Tenant states that several neighbours, including some of the neighbours that witnessed the incident, told her that they were concerned for both her and her son. The Tenant provides support letters from these neighbours. The Tenant states that since the incident the son has not returned to the unit except when he came to pick up his knapsack with his work clothes after his release from the hospital. The Tenant states that the son attends school and works as a chef.

The Tenant states that one of the neighbours told her that her son did not have a knife on him during the incident. The Tenant states that she has no idea what her neighbour refers to as a previous incident of her son pounding on the walls. The Tenant states that her son's behavior that day was completely out of character and that he has no criminal or juvenile record or any other behavioral problems. The Tenant states that her son had only experimented in the past with drugs such as marihuana.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, 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, or
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

During the incident the Tenant's son behaved and acted in a manner that would reasonably be seen as frightening. The Tenant's son also caused damage to another tenant's unit. However, I accept that this was a one-time incident, the damage was not excessive or structural, the son does not live with the Tenant, and during the incident

the son was not saying anything about attacking or hurting anyone but rather was concerned for the safety of his mother and the children. Although some of the tenants are concerned about the son's presence at the unit I note that some are not concerned about the son and that criminal justice measures are in place disallowing the son's attendance at the unit. I consider such measures to be sufficient to allay concerns about the son's return to the unit. I also consider that the tenancy is long term and otherwise good. For these reasons I find that the Landlord has not substantiated that the tenancy of the mother should end due to the son's actions. I therefore cancel the Notice and the tenancy continues. I would strongly caution the Tenant that should her son attend the unit before the outcome or resolution of the criminal charges, the Landlord could very well have grounds to end the tenancy.

Conclusion

The Notice is cancelled and of no effect.

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: October 06, 2016

Residential Tenancy Branch