



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vernon Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy, and for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties also each called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses. No issues with respect to service or delivery of documents or evidence were raised, and all evidentiary material has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on June 1, 2016 and expires on July 31, 2017, and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$462.00 per month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$430.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 40 townhouses in a complex and a copy of the tenancy agreement has been provided.

The landlord further testified that on August 17, 2016 the landlord's agents served the tenant with a 1 Month Notice to End Tenancy for Cause by taping it to the door of the rental unit. A copy has been provided and it is dated August 17, 2016 and contains an effective date of vacancy of September 30, 2016. The reasons for issuing the notice state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Shortly after moving into the rental complex the tenant's mother visited and hit a parked car in the parking area of the rental complex, which was witnessed by a few other tenants. The landlord has a camera, and the footage shows that the tenant's mother got out of her vehicle and went into the tenant's rental unit. People who witnessed it went to the tenant's rental unit, and the tenant and her mother came out. The parties had a conversation and exchanged information, but then the tenant became angry waving her arms and yelling.

The landlord has also provided copies of emails and notes from neighbouring tenants wherein the writers state that the tenant called them foul names, told them that they picked the wrong person to fuck with and other very offensive language. One of the notes describes an incident where the tenant's mother drove into the parking area too fast and a neighbouring tenant yelled at her to slow down. A short time later the tenant went out yelling at the neighbours, getting into a person's face who was sitting in a chair. The landlord's agent testified that the camera footage shows the tenant throwing a bunch of dirty diapers at them, walking away, and then pulling her pants down, flapping her buttocks at them. One of the offended tenants states that the offended tenant will be applying for a transfer to a different complex. The incident took place on July 6, 2016.

The tenant's mother is at the tenant's rental unit a lot, and when the tenant's mother speaks to other tenants, everything is calm. But when the tenant arrives, things get erratic. The landlord's agents don't always advise tenants of complaint letters that the landlord receives, and if there hadn't been a second incident it may have been just put to rest. However, because the tenant pulled down her pants, made it a volatile situation, and it was only 3 weeks after the first incident, the landlord took it seriously and issued the notice to end the tenancy.

The landlord's witness testified that she also works for the landlord, and witnessed camera footage which shows the tenant's mother hit another vehicle in the parking area, looking at the damage, then going into the tenant's rental unit. The neighbouring tenant whose car was hit comes out of her apartment and inspects the damage. The tenant arrives and the parties have some conversation. Others were also standing around who witnessed the accident. When the tenant came out after her mother, her body language indicated it was a heated exchange between the tenant and the neighbouring tenant. The aggressor seemed to be the tenant, and the body language of the neighbouring tenant appears that the person was in shock.

The landlord's witness also testified that she viewed another incident on July 6, 2016 from the camera footage. Two neighbouring tenants were sitting in front of a unit, and the tenant and her mother drove past in a white car. There is an exchange of words from the neighbouring tenants to the tenant and her mother. Later, the tenant came out of her unit and went to where the neighbours were sitting and it appears to be a heated conversation. The tenant's body language is aggressive and angry. The tenant was uncomfortably close to a neighbouring tenant who was sitting in a chair, and the tenant appeared to be yelling. The tenant was holding a garbage bag and threw it at one of the neighbouring tenants. The tenant went back to her unit, then emerged with her mother and got back into the car and drove away, passing the 2 neighbouring tenants giving them the finger.

The tenant testified that the original Tenant's Application for Dispute Resolution was filed on August 25, 2016 at a Service BC Office. The Office forgot to deal with it. The tenant called to see why it was taking so long and they admitted their mistake. The file shows that the tenant's application was accepted at the Service BC Office on August 25, 2016, but was not processed until September 22, 2016.

The tenant further testified that all of the tenants did something wrong and she is being punished. The landlord never mentioned any problems to the tenant.

The woman from the second incident was invited to the tenant's house, the parties had a conversation, apologized, and there are no issues. No other tenants have any problems with the tenant, after all of these months. The incidents were aggravated by everyone, and the landlord didn't take any of the tenant's complaints.

The tenant ended up in hospital with asthma, and didn't hear from anyone so believed it was put to rest, and some of the landlord's letters are outright lies. People were harassing the tenant's mother, using foul language toward her. The tenant moved her arms around because she is an animated person, but no one was threatened or endangered. The tenant threw the diapers at them, but didn't whip them in her face.

She threw on the ground toward the neighbouring tenant, not at another tenant, and the diapers weren't dirty. The tenant apologized to that tenant only, and there have not been any issues since.

The tenant's witness testified that she is the tenant's mother, and on July 6, 2016 neighbours of the tenant were yelling profanities. The tenant was inside her apartment at the time. When the tenant and the witness drove by the group of neighbours, nothing happened. However the tenant fingered the other tenants when the tenant went out with the bag of diapers.

The witness admits that she hit another tenant's car. A bunch of people came over and the witness got nervous. They were yelling at the witness, calling her names, calling her stupid, and the witness went into the tenant's house. The witness has a phobia, and was afraid, but went back to exchange information with the person whose vehicle was hit. More people arrived and the witness went inside. Someone called police, who talked to the witness.

Analysis

Firstly, with respect to the tenant's application for more time than prescribed to dispute a notice to end the tenancy, I have reviewed the material on the case file, and I accept the testimony of the tenant that the documents were not processed after filing. Therefore, I find the tenant's application for more time to be justified, and is hereby allowed.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The landlord's agent and witness both testified to observing some disturbing incidents on the camera footage. The landlord has also provided notes from other tenants describing disturbances.

The tenant testified that she apologized to one of the tenants and they no longer have issues, but hasn't seen the other tenants around who were disturbed and doesn't know where they live.

I have read the statements of other tenants, which have numerous references to sexual gestures, rude comments, and disturbing name calling by the tenant. The allegations do not fall short of threatening harm to other tenants.

Considering the testimony of the parties and the evidentiary material, I am satisfied in the circumstances that the tenant has significantly interfered with or unreasonably disturbed other occupants and seriously jeopardized the health or safety or lawful right of other occupants. The tenant's application to cancel the notice to end the tenancy is dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that the 1 Month Notice to End Tenancy for Cause is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 25, 2016

Residential Tenancy Branch

