



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC & FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated August 26, 2016

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for cause.
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on August 26, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on each other by registered mail.

At the end of the hearing I advised the parties that the decision was reserved. The parties agreed that given we are at the end of October that if the landlord was successful the Order for Possession should be made effective November 30, 2016 and not October 31, 2016.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated August 26, 2016?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on January 1, 2015. The present rent is \$12055 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$997 on December 1, 2014.

Grounds for Termination:

Neither party provided me with a copy of the Notice to End Tenancy. However, I was advised by the parties that it is based on the following grounds:

47(1)(d) 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,

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord seeks to end the tenancy alleging that the Tenant has significantly interfered with and unreasonably disturbed another occupant or the landlord. In particular the tenant's conduct was responsible for the neighboring tenants (the two witnesses) to leave the rental unit. The rental unit has not been re-rented as the landlord takes the position she has a legal obligation to disclose the noise issues to prospective tenants and no one has agreed to rent it unit and it remains vacant.

Witness 1 (VW) gave the following testimony:

- He and his wife moved into the rental unit on June 9, 2016. They had 3 days of peace as the tenant was absent. Since then the tenant's conduct has significantly interfered with their enjoyment of the rental property and resulted in them vacating the rental unit in early September.

- The first incident occurred on June 13, 2016 from 11:00 p.m. to 4:00 a.m. by the tenant's yelling and moaning. They contacted security 2x that night but the disturbance continued.
- From June 13 to August 21 they were disturbed over 33 times. They e-mailed the landlord on multiple occasions. This is significant as either they or the tenant were away on vacation for 20 days during the period. The disturbances were caused by the Tenant moaning and yelling during the night or by playing his T.V too loud.
- They formed the opinion the tenant was deliberately trying to make them uncomfortable to force them to move.
- On August 17 the tenant banged the door and walls to wake us up.
- The tenant claimed that as he was in the rental unit prior to the their tenancy he had the right to do what he wanted.
- The police were called on three separate occasions.
- The vibrations from the subwoofer interfered with their enjoyment on many occasions.
- They advised the tenant on multiple occasions he was causing a disturbance
- Eventually they decided they could not longer take it and he and his wife move from the rental unit at a cost of \$4500.

Witness #2 (DL) testified as follows:

- She is the wife of VW and lived next door to the tenant.
- They have lost a great deal of sleep because of his yelling and moaning.
- The tenant's disturbances could be heard by the security guards outside the townhouse.
- The tenant binge drinks and often was not aware of the disturbances he was causing.
- She estimated she sent 20 to 30 different e-mails to the landlord regarding these disturbances.
- The disturbances occurred not only at night but also during the day.
- The tenant would provoke us by failing to live up to his agreement relating to reducing the sound from the T.V.
- Often he would not answer our telephone calls.
- The tenant was away for 10 days. When he returned he carried out aggressive vacuuming which caused significant noise.
- They expressed empathy for the tenant's mental health. On some occasions they would overhear him saying "Let me die, Let me die."

The landlord produced a large number of e-mails and other documents from the neighboring tenants and from the security relating to the disturbances. They also produced several extensive letters from the landlord to the Tenants about the complaints.

KC testified as follows:

- She acknowledged that on 4 occasions during the night the tenant caused significant disturbances.
- The tenant MS is in a great deal of emotional pain. He suffers from alcoholism which led to his problems.
- She disputed much of the evidence of the neighboring tenants stating their complaints are embellishments and much of the noise is normal user.
- The tenant has taken significant steps to bring his alcohol problems under control. He has been alcohol free for 35 days. The tenants produced a letter from the tenant's doctor that states he suffers from a serious illness that lead to his unstable behavior that would not normally be keeping with his natural character. He is involved in ongoing monitoring by way of addictions counselling plus a 12 step support recovery groups. The doctor expressed hope on compassionate grounds that the eviction could be rescinded.
- The tenant produced a letter from Vancouver Coastal Health confirmed he has been attending Vancouver Daytox
- They produced documents they affect of Zyban and the problems that can arise.
- The tenant produced some character references.

The tenant MS testified as follows:

- He has been a resident for 1 ½ years without complaints.
- The complaints of the neighbors are overstated.
- Prior to vacuuming his own place he vacuumed a friend's place and there were no complaints from their neighbors.
- There have no complaints from anyone after the neighbors vacated.
- He denied that he attempted to annoy the neighbors on purpose.
- When he did the vacuuming he stat

Tenant's Application - Analysis:

The tenant should be commended for the successful efforts he has made to bring his demons under control. I accept the evidence of his doctor and support people that he is doing well with his recovery.

However, as I advised the parties at the hearing the obligation of an arbitrator in a hearing such as this is to determine whether the landlord has sufficient grounds to end the tenancy at the time the one month Notice was given.

The landlord has the burden of proof to establish sufficient grounds to end the tenancy on a balance or probabilities. After carefully considering all of the evidence I determined the landlord has established sufficient grounds to end the tenancy for the following reasons:

- The evidence of the landlord's witnesses as to the timing of the disturbances, the length of many of the disturbances and the number of disturbances is overwhelming. I do not accept the submissions of the tenants that their evidence is an embellishment. This is one of the rare occasions where the disturbances have been so extensive that it forced a neighbor to move at a significant financial cost to the neighbor..
- The tenants have acknowledged responsibility for 4 major incidents.
- The documentary evidence including e-mails and reports of the security guards confirms the testimony of the landlord's witnesses.
- The landlord has lost rent because of this situation. The landlord testified she felt compelled to disclose the noise problems to prospective tenants and they have chosen not to rent the premises.
- One can empathize and commend the tenant's efforts to deal with his health problems. However, I determined that as of the date of the Notice to End Tenancy the landlord had sufficient grounds to end the tenancy.

I determined the Tenant has significantly interfered with and unreasonably disturbed another occupant and the landlord. I further determined the Tenants have breached a material term of the tenancy agreement and failed to rectify the breach with a reasonable time after receiving written notice to do so.

As a result I ordered that the application of the Tenant be dismissed. The tenancy shall end. The parties agreed that if the landlord was successful it was appropriate that I set the Order for Possession for November 30, 2016.

Landlord Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant(s) application to cancel the Notice to End Tenancy has been dismissed. Accordingly, I granted the landlord an Order for Possession effective November 30, 2016. As the landlord has been successful I further ordered that the Tenant pay to the Landlord the sum of \$100 such sum may be deducted from the security deposit.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Conclusion:

In summary I dismissed the Tenant's application to cancel the one month Notice to End Tenancy. I granted an Order for Possession effective November 30, 2016. I ordered that the Tenant pay to the Landlord the cost of the filing fee in the sum of \$100 such sum may be deducted from the security deposit.

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 28, 2016

Residential Tenancy Branch