



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTRAL PARK CITIZEN SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking an order as follows:

1. For an order of possession.

The tenant's application is seeking an order as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on October 15, 2009. Rent is determined by BC Housing for seniors. The tenant paid a security deposit of \$212.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2016.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and
- Breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that the rent is subsidy by BC senior housing and rent is based on the number of occupants in a rental unit, and this particular rental unit is a very small bachelor unit and intended for only one person as stated in the tenancy agreement.

The landlord's agent testified that the tenant has been given numerous warning letters about their guest who is occupying the residents more often than not and there was a previous hearing on July 24, 2012. The agent stated at that hearing the Arbitrator determined the tenant's guest was not a casual visitor and the landlord was not in breach of Act, by warning the tenant that they were in breach of their tenancy agreement. The file number of the July 2012, has been noted on the covering page of this decision.

The landlord's agent testified that the tenant continues to breach the occupancy clause as the tenant's boyfriend is staying Friday to Monday and then one or two night during the week. This was the same pattern which the tenant's guest was found not to be a casual visitor. Filed in evidence are warning letters.

The landlord's agent testified that this is a senior complex and they have monthly celebrations that celebrate birthdays and other special occasions. The agent stated at the annual barbecue in June 2016, the tenant was unreasonable interfering with one of the other occupants that had volunteered to do the cooking, by taking utensils and interfering with them cooking. The agent stated the tenant was asked more than six occasions to leave the cooking area. The agent stated on that occasion the tenant also berated another occupant standing in the food line.

The landlord's agent testified that the tenant also has unreasonably disturbed other occupants on other occasions. Such as when they had a guest pianist attend and the tenant continued to interrupt the pianist during their performance and then proceed to argue with the other occupants when they objected to the tenant's behaviour.

The landlord's agent testified that the occupants of the residence can obtain an assigned garden plot in the community garden. The agent stated that they had a complaint that the tenant removed another occupant's potato plants and took over the garden plot by adding their own tomatoes. The agent stated the reason stated by the tenant was that the person who was assigned the plot was too old and was not working the site. The agent stated that the tenant did not have the occupant's permission to remove their plants or take over the garden plot.

The landlord's agent testified that the tenant is disrespectful with the other occupants and is significantly interfering with their right and unreasonably causing disturbances. The agent stated that they no longer want the tenancy to continue.

The tenant testified that they do not have an unauthorized guest stay over. The tenant stated their boyfriend is not a guest. The tenant stated that their boyfriend stays every weekend, which can vary from Friday to Sunday or Friday to Monday. The tenant stated that their boyfriend does not stay over during the week that he will stop by the building simply to say hello and then leave. The tenant stated that on occasion their boyfriend will be too tired to drive back to the office and will stay the night.

The tenant testified that they did not interfere with the BBQ as they just wanted to help as the person who was cooking was struggling with 2 BBQ and was sick. The tenant stated this was not their kitchen as it was outside event.

The tenant testified that they did not unreasonable interrupt the pianist or the other occupants. The tenant stated they were only trying to get the pianist to play a song, so they sung the words.

The tenant testified that they took the few remaining potatoes from the other occupant's garden blot and hung them in a little bag off the occupant's door. The tenant stated that the garden plot was assigned to 95 year old person and they are too old to care for the garden. The tenant does not deny removing the potato plants and placing their own tomato plants in the garden without the consent of the occupant.

Analysis

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

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I accept the tenants evidence that their boyfriend is not a guest as they are occupying the premise at least 3 to 4 nights each week. The tenant was warned by the previous Arbitrator in the July 2012 that their boyfriend was not a casual guest as they were occupying the premises for at least five nights a week.

The evidence of both parties supports that the boyfriend is now occupying the premises for 3 to 4, nights each week. Which the evidence supports this is the minimum of nights each week, as the boyfriend will also stay during the week. I find this does not support they are a casual guest, which is permitted under the tenancy agreement.

In this case, the tenancy agreement indicated no other person other than the tenant can occupy the premises. The agreement further indicates the bachelor suites are designed to accommodate only one residence.

I find the tenant has breached the tenancy agreement as the tenant is the only person to be occupying the premises. Therefore, I find the landlord has proven that the tenant has breached a material term of the tenancy agreement.

As I have found the tenant has breached a material term of the tenancy, I find it not necessary to consider the balance of the reasons stated in the Notice.

Therefore, I find the Notice issued on August 9, 2016, has been proven by the landlord and is valid and enforceable. The tenancy has legally ended in accordance with the Act.

Therefore, I dismiss the tenant's application to cancel the Notice. Since the landlord has accepted occupancy rent for the month of October 2016, I find it appropriate to extend the effective vacancy date in the Notice to October 31, 2016, pursuant to section 66 of the Act.

Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **October 31, 2016, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel the Notice, issued on August 9, 2016 is dismissed. The landlord is granted an order of possession.

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 18, 2016

Residential Tenancy Branch