



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenants which have been joined to be heard together, both seeking an order cancelling a notice to end the tenancy for cause.

The tenants both attended the hearing with a Legal Advocate, and both tenants gave affirmed testimony. One of the landlords also attended and represented the other landlord. The landlord and 4 witnesses gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

At the commencement of the hearing the tenant's advocate advised that the tenant had provided evidence later than set out in the Rules of Procedure, but it was provided to the Residential Tenancy Branch and to the landlord on September 29, 2016. The landlord agreed that she had received it, albeit on September 30, 2016, and has reviewed it. I did not receive the evidentiary material prior to the commencement of the hearing, nor had I received both Applications prior to the commencement of the hearing.

The hearing did not conclude on the first day scheduled and was adjourned for continuation, and during the break I received the evidentiary material and the second application of the tenant.

The landlord did not oppose inclusion of any evidence, and the parties agreed that all evidence has been exchanged and should be considered in this Decision. No other issues with respect to service or delivery of documents or evidence were raised. All evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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 testified that the tenants named in the Tenant's Application for Dispute Resolution are mother and daughter. This month-to-month tenancy began on January 18, 2013, but the landlord isn't even sure if the tenant still resides there. Rent in the amount of \$669.50 per month is payable on the 1st day of each 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 \$325.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse in a complex containing 40 units, and the landlords do not reside there.

A copy of the tenancy agreement has been provided which states, in part: "Smoking of tobacco products only is limited to the area described as," and in handwriting states: "smoking is prohibited within 3 meters of doorways, open windows & air intakes..." and "24 hour quiet time, use headphones for music, no surround sound, no wind chimes..."

The landlord further testified that on August 3, 2016 she served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided and it is dated August 3, 2016 and contains an effective date of vacancy of September 30, 2016. The landlord testified that the details portion of the form was incorrect, so the landlord issued another 1 Month Notice to End Tenancy for Cause and again served it to the tenant by posting it to the door of the rental unit with a witness on August 19, 2016. The boxes on the form that were checked off were the same on both notices, and the reasons are:

- 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;
 - put the landlord's property at significant risk.

The landlord testified that the tenant is not permitted to be drunk in public and common areas of the rental complex are public area. The trigger for issuing the notice to end the tenancy was the tenant at her door yelling obscenities across the parking lot to the landlord. The landlord told the tenant to be quiet, and the tenant was drinking but not that drunk. Later, however, the tenant harassed 2 tenants. The tenant went to 1 of those homes 3 times, knocked, wouldn't leave and kept coming back. The other tenant advised the landlord that the tenant went to her home to use the phone between 2:00 a.m. and 4:00 a.m. One of the neighbouring tenants fears the tenant. The tenant wanders around, is disruptive and challenging, and the landlord feels threatened.

The landlord also testified that the relationship between the landlord and the tenant is fine when the tenant is sober, but has attended the landlord's office about 5 times smelling of alcohol on her breath and when the landlord asks her to leave, the tenant won't leave. The landlord does not believe the tenant even remembers.

The landlord has also been inside the tenant's rental unit and witnessed items piled up and 3 beds in the living room at one time, and fears the tenant may be hoarding.

The landlord has also provided the following evidentiary material:

1. A note to the tenant from the landlord dated July 17, 2014 stating that the tenant had been very drunk the previous Saturday night, yelling and talking disrespectfully to police, it is a final warning, the tenant apologized and that no smoking is allowed in the rental unit;
2. A breach letter dated June 16, 2014 stating that the landlord considers 24 hour quiet time to be a material term of the tenancy agreement;
3. An undated note from the landlord to the tenant stating that the landlord had complaints about a house guest of the tenant's wandering around in the morning drunk;
4. A breach letter dated July 22, 2014 that states that the landlord considers no smoking in the rental unit, do not disturb neighbours and maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit to be a material term of the tenancy agreement, and to consider the letter to be written notification that indoor smoking, noise complaints and unclean unit that is a fire hazard will result in a notice to end the tenancy;
5. A breach letter dated April 13, 2016 stating that the landlord considers smoking marihuana and tobacco products only to be a material term of the tenancy agreement;
6. A note from a neighbouring tenant complaining of loud music at 11:07 with another note below dated May 13, 2016 stating that the writer spoke to the tenant advising no more loud music – should be listening on headphones as the rental agreement stipulates;
7. A note from the landlord to the tenant dated June 16, 2016 stating that tenants observed the tenant wandering the complex taking cigarette butts from their cans, and that it is not acceptable;
8. An undated note from the landlord to the tenant stating that when consuming alcohol the tenant must not leave her unit, and wandering to another unit is considered drunk in a public place;
9. 2 unsigned Incident Reports to the landlord, both dated August 3, 2016 stating that the tenant knocked 3 times drunk and would not leave when asked, that it is

the 3rd time the tenant arrived in the middle of the night; and 3 times the tenant came knocking on the door in one night and was inebriated.

The landlord's first witness (CS) testified that he is the building maintenance person and has been so employed for the owner of the complex for 7 years. He also works in other complexes, but mainly this one, and there is also an alternative maintenance person for this complex.

The tenant has absolutely been a problem when drinking, and the landlord's employees don't have time to take care of peoples' problems. Often the tenant can be nice to other tenants but is often intoxicated disrupting managing the complex, but has never disturbed or caused the witness problems other than not covering her body parts while "dumpster diving." The witness was a correctional officer and has held other security positions and testified that the tenant has alcohol issues, and the landlord's agents cannot manage the complex with problems, nor do they have time to deal with it.

The witness has also been inside the tenant's rental unit and testified that it is unnecessarily cluttered and the witness has never seen worse than that, but it's been awhile since he's been inside.

Other tenants have said that the tenant has been drunk, swearing in public, and the witness has seen evidence of smoking and clutter, and smoking has never been allowed near the rental units.

The landlord's second witness (LF) is a neighbouring tenant and testified that the witness' mother and the tenant are drinking partners, but the witness does not permit that in her rental unit. On August 2, 2016 the witness, who resides in the rental complex, was at home with her children. At 10:30 p.m. the tenant knocked on the witness' window looking for the witness' mother. The witness' mother was not there but the tenant kept returning. The witness locked the door, closed the curtains and the tenant continued yelling at the witness through the door. The witness told the tenant she was frightened but the tenant kept returning.

On another occasion at about 2:30 a.m. the tenant arrived again looking for the witness' mother and scared the witness. The witness told her to leave, but on each occasion the tenant is drunk and doesn't go away. The witness only has contact with the tenant when the tenant is looking for the witness' mother, and only shows up when she's drunk.

The witness' mother was living with the witness but the witness told her to leave because of her drug problem and drinking.

The landlord's third witness (JG) testified that he is the maintenance helper for the rental complex, but has not been inside the tenants' rental unit for perhaps a couple of years.

The witness further testified that he has been bothered by the mother tenant, but not by her daughter. The witness lives in the centre of the complex and can see other buildings, and observed the tenant "dumpster diving" last week, opening bags, collecting cigarette butts and cans, and going through things. He has also observed the tenant drinking, stumbling and bothering people for cigarettes, and when the tenant doesn't get one she starts yelling and putting people down. The tenant has also yelled at the witness.

The witness also observed the tenant and another person smoking marihuana about 2 months ago outside the tenants' suite.

The landlord's fourth witness (CR) testified that the witness has resided in the complex for 9 years, and has found the landlord to be fair. Before the current landlord was managing it was on a daily basis that RCMP were there for drunk or domestic disputes, and it was normal for kids to see police. Since the new landlord has taken over, that rarely happens, and the complex is cleaner and safer.

The first tenant testified that being worried about her friend, the tenant went to the home of her friend's daughter in the rental complex on August 2, 2016 at 10:30 p.m. The tenant knocked, asked for her friend and was advised that the friend wasn't there. The tenant asked the friend's daughter, who agreed to text the friend but refused to phone her. The tenant left, but went back asking again for the friend's daughter to text the friend and knocked on the door again and was told to go away. The tenant has not been there since, and did not attend there intending to cause a disturbance.

The tenant further testified that she has a good relationship with all neighbours and has never harmed anyone. The tenants borrow and return cigarettes with each other, and the tenant helps with gardening.

The tenant denies any allegation of hoarding. The rental unit is clean, dishes are done, floors are swept, and there is no fire hazard. Some tenants moved out of the complex and stored some items at the tenant's rental unit that wouldn't fit in the moving truck. The landlord wasn't happy with the tenant storing items for other tenants. The landlord gets too personal with others' lives, controlling, accuses people and lectures the tenant about smoking and her personal life. The tenant tries to avoid her to escape being questioned. The tenant is on disability and described the character of the rental complex as pretty dysfunctional and not well managed. Things don't get fixed well, and

people move in and out like a motel. Police have been there a lot due to fights and yelling, but only because of the tenant on one occasion.

The tenant has a fire extinguisher but never smokes inside.

The second tenant testified that she is the daughter of the other tenant, and works 2 jobs but is home each night by about 11:30 p.m. The tenant has never seen her mother being abusive or aggressive with anyone. However on one occasion other tenants were yelling and swearing at their kids and the tenant's mother said she would call Social Services. The second tenant called them after getting the number from the landlord. The neighbouring tenants called police because they felt threatened when the tenant's mother threatened to call Social Services, and believed the tenant's mother had called them.

The tenant also testified that the neighbours borrow sugar and stuff from each other, look out for each other, and most have children. Few are long lasting and the tenant doesn't bother to get to know anyone.

Before this tenancy, the tenant and her mother suffered a fire and lost everything. They moved some things in a friend's home but when the friend died, the items had to be moved to this rental unit. The landlord showed up and noticed that the tenants had a lot of stuff, largely which was given away to charity.

The tenant's relationship with the landlord is fine, but the landlord asks odd questions such as why the tenant's mother goes out. The tenant was advised by neighbours that the landlord also went to all neighbours asking them to testify after the notice to end the tenancy was issued, and they are now afraid they will be evicted as well. A lot of people have been evicted over dumb reasons. The landlord does not reside on the rental property and doesn't always know what's going on, and doesn't get both sides of the story, but should take the time.

Numerous notes in support of the tenants have been provided.

Landlord's Closing Submissions

The tenant's drinking has gone on for years and become an issue. Other tenants are feeling threatened by the tenant, but have not given written statements. The neighbouring tenant's complaints needed to be addressed so it didn't happen anymore. The complex is family oriented with lots of kids and the landlord values the fact that dumpster diving and rummaging thru ashtrays is not what the landlord's community is striving for.

Closing Submissions of the Tenants' Advocate

The landlord has failed to establish and reach the high bar of the legislation, and based on the landlord's testimony has exceeded her jurisdiction under the *Residential Tenancy Act*. The landlord has included unconscionable terms in the tenancy agreement including, music, wind chimes, and numerous notices about guests and what they do.

The tenant is on a fixed income, and rolls cigarettes, but there is no evidence that she has smoked inside the rental unit. There is nothing in the landlord's evidence to show that the tenant has interfered with or unreasonably disturbed another occupant, nor has the landlord established any safety risk, or that the home is cluttered or a hazard. Many of the notes provided in support of the tenants indicate discrimination and the poor condition of the rental complex and how they've been treated by the landlord or the condition of their rental units.

The tenants' advocate also submits that pursuant to Sections 68 and 55, the tenants ask that I extend the time frame granting more time for the tenants to seek alternate accommodation if the 1 Month Notice to End Tenancy for Cause is upheld.

Analysis

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 dated August 3, 2016, and I find that it should be cancelled; the landlord testified that the details section is incorrect.

I have also reviewed the 1 Month Notice to End Tenancy for Cause dated August 19, 2016 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.

I have also reviewed the tenancy agreement, and I find that the term of 24 hour quiet time to be unconscionable, which is contrary to the *Act*.

I also agree with the submissions of the tenants' advocate that there is no evidence of smoking in the rental unit, and no evidence of hoarding. There is no doubt that there were a lot of items in the rental unit at one time, but the tenants explained that and neither the landlord nor the landlord's employees have recently been in the rental unit. Therefore, I am not satisfied that the landlord has established that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The testimony and evidence that can be considered is what is alleged before the notice to end the tenancy was issued, not what has been alleged since. The landlord testified that the tenant swore at her across the parking lot, that the tenant wanders around and is disruptive and challenging, but few specific incidents or dates. The evidentiary material of the landlord includes numerous letters, notes, breach letters and 2 unsigned incident reports, however the first 4 I've listed above are very dated.

The landlord's maintenance person testified that the landlord's employees don't have time to take care of people's problems, but the tenant has not disturbed him or caused him any problems. He testified that other tenants have said the tenant has been drunk and swearing in public, but again no specifics.

Another of the landlord's witnesses testified that on numerous occasions the tenant has been seen wandering around the complex drunk, yelling and bothering tenants, but again no specific incidents or dates.

The landlord also testified that the tenant bothered another on August 2, 2016 and I heard from that person as a witness. She testified that on August 2, 2016 the tenant was looking for the witness' mother who no longer resides with the witness, and kept returning despite requests to leave. I accept that the 2 unsigned Incident reports are from that witness.

The first tenant testified that on August 2, 2016 she was worried about her friend so asked the friend's daughter to call her, but the daughter only agreed to text. The tenant went back again asking for the daughter to text and was told to go away. The tenant testified that she left and hasn't been back since. I accept that because the witness also testified that the tenant and the witness' mother were drinking partners and the witness told her mother to leave and is no longer resident in the complex. However, I have no evidence of when the witness' mother left, and the neighbouring tenant's statement states that August 2, 2016 was the 3rd time the tenant arrived at her unit in the middle of the night.

The second tenant testified she has never seen her mother abusive or aggressive with others. She also testified that the landlord does not reside on the rental property and doesn't always know what's going on, and doesn't get both sides of the story, but should take the time.

In order to uphold the notice, I must be satisfied of a significant interference or unreasonable disturbance, or a serious health, safety or lawful right of another occupant being jeopardized by the tenants' actions. Considering that the neighbouring tenant testified that it was more than one occasion that the tenant bothered her in the middle of

the night, and kept returning, I find it to be a significant interference and unreasonable disturbance.

The tenants' application to cancel the 1 Month Notice to End Tenancy for Cause dated August 19, 2016 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. The tenants' advocate submitted that more time should be given pursuant to the *Act*, which states:

55 (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

68 (2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,
(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy.

The effective date of vacancy contained in the notice is September 30, 2016 which has already passed. Had the notice to end the tenancy been given today, it would not take effect until November 30, 2016. I agree that the tenants will require time to secure a new rental unit, and having found that the notice given is in the approved form, I grant the Order of Possession effective November 30, 2016.

Conclusion

For the reasons set out above, 1 Month Notice to End Tenancy for Cause dated August 3, 2016 is hereby cancelled.

The tenants' application to cancel the 1 Month Notice to End Tenancy for Cause dated August 19, 2016 is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective November 30, 2016 at 1:00 p.m.

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 19, 2016

Residential Tenancy Branch

