



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HFBC Housing Foundation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord's application: OPC

Tenant's application: CNC, O

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The landlord applied for an order of possession pursuant to a one month Notice to End Tenancy for cause. The tenant applied to cancel the Notice to End Tenancy. The hearing was conducted by conference call. The landlord's representatives called in and participated in the hearing. The tenant attended and was represented by Mr. S.C., his step son who acted as his agent. Mr. M.L. also attended on behalf of the tenant but did not participate in the hearing.

Issue(s) to be Decided

Should the one month Notice to End Tenancy for cause dated August 22, 2016 be cancelled?

Is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?

Background and Evidence

The rental unit is a bachelor apartment in the landlord's mid-rise apartment in Vancouver. The rental property is a subsidized housing complex that provides housing with rent related to the tenants' income. The tenancy began October 15, 2013. The tenant is 80 years old. He does not speak English and lives alone in the rental unit.

On August 22, 2016 the landlord served the tenant with a one month Notice to End Tenancy for cause. The Notice to End Tenancy was sent to the tenant by registered

mail. The tenant's representative acknowledged that the tenant received the Notice, but because he was unable to read it, the tenant did not apply to dispute the Notice to End Tenancy until it was discovered by his agent who then filed an application to cancel the Notice to End Tenancy.

The landlord's representatives testified that the Notice was served on the tenant because he has seriously jeopardized the health, safety or lawful right of another occupant or the landlord. There have been some recent occurrences that caused the landlord to serve the Notice to End Tenancy. The landlord's representative said that it appears that the tenant, due to his age and deteriorating mental condition is losing the ability to live alone without assistance and he may need to find supportive housing. The landlord's representative said that the landlord has received complaints about loud noise and elevated volume from his radio late at night that has disturbed other residents. The landlord has sent warning letters to the tenant about complaints that the tenant has been abusive towards other tenants, about loud noises and about the tenant's practice of burning numerous candles on his balcony.

The landlord's representative testified that in August, 2016 the landlord received a complaint from another occupant that the tenant threw eggs at the door of their apartment. They submitted photos showing the egg spattered door. The landlord's representative also reported that on August 22, 2016 a fire was started on the tenant's balcony caused by unattended candles or incense left burning on a table. The fire was put out and caused minimal damage. The Fire Department attended and provided a report. The landlord's representative said the incident is concerning because the landlord does not employ an on-site manager and the situation might have been worse had the landlord's manager not been at the site when the incident occurred.

The landlord's representative said at the hearing that the landlord believes that the tenant is no longer capable of living independently. She said that the landlord wants to end the tenancy out of concern for the well-being of other occupants. She said that the landlord would be prepared to give the tenant time to find alternate housing. She also made the comment that the tenant might be able to continue living in the rental unit if he received greater assistance and home care.

The tenant and his agent submitted documents in response to the Notice to End Tenancy. After the tenant's agent became aware of the complaints he has been monitoring the tenant more closely. He has posted signs in the tenant's native language cautioning him about noise and burning candles. In the documents submitted the tenant's pastor noted that he had stopped burning candles because it was part of a religious practice that he no longer followed. The tenant's agent submitted a medical report concerning his health and ability to live independently. The report was prepared by a physician who specialized in geriatric medicine. She noted that the tenant has

decreased short-term memory and has mild cognitive impairment or early dementia, but, based on her assessment and on the report from a case manager after a home visit, the physician concluded that the tenant was capable of managing his own living arrangements and did not require assisted living or a nursing home at present. The physician did not consider that the tenant was capable of complex decision-making and needed family support, but she thought he was sufficiently healthy to live independently in most of his daily activities.

The tenant's agent testified that he does not have a place in his home for the tenant to live and the tenant does not qualify for other housing in an assisted living facility or nursing home. Neither the tenant nor his family have funds to pay for a private care facility. The tenant's agent said that he and his family, as well as the tenant's brother and members of the tenant's church community have volunteered to provide a higher level of support to the tenant by making regular visits to him at the rental unit to check on his well-being, on the condition of the rental unit and to address any concerns that may be raised by the landlord. The tenant's agent proposed that the tenancy be allowed to continue on these terms.

Analysis

The events that caused the landlord to issue the Notice to End Tenancy were legitimate concerns; they are not disputed and they may be regarded as events that have jeopardized the health, safety or lawful right of other occupants or the landlord.

Since the Notice to End Tenancy was given the tenant's family have become aware of the landlord's concerns. The tenant's step son and other family members, as well as the congregation of his church have interceded and taken steps to prevent a recurrence of the incidents. According to the tenant's agent, some of the incidents are due to a language barrier and the tenant's inability to read notices and letters of complaint given to him. The landlord's agent has translated the warnings and posted notices in the rental unit to alert the tenant. He and his family are now monitoring the tenant on an almost daily basis and will be able to assist the tenant and communicate with him about any issues that may arise. They will look after his mail and review all notices to the tenant and maintain contact with the landlord on a continuing basis.

I find that the incidents that gave rise to the Notice to End Tenancy, although concerning, do not constitute sufficient cause to end the tenancy because one of the factors in the continuing problem was the tenant's inability to understand the notices and warnings given to him. Since the Notice to End Tenancy was given the tenant's agent has taken significant steps to address the landlord's concerns. He has explained the problems and posted reminders to the tenant. The tenant's agent has arranged to provide the tenant with regular assistance and monitoring with the expectation that this

assistance will permit the tenant to live in the rental unit and will allay the landlord's concerns about disturbances or jeopardy to other occupants. I was not informed of any significant incidents that have occurred since the Notice to End Tenancy was given in August, so I assume the intervention has been successful. For the reasons stated, I find that the tenant's application should be granted and the Notice to End Tenancy dated August 22, 2016 should be cancelled. The landlord's application for an order of possession is dismissed and the tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

I conclude these reasons with a cautionary note to the tenant and to his agent. The tenant is elderly; his health and cognitive functioning are declining. His tenancy may only be maintained with outside supervision and support. In the event that the tenant is the cause of further incidents that disturb other occupants, that raise concerns about the health or safety of other occupants, or that put the landlord's property at risk, the landlord will be at liberty to serve the tenant with another Notice to End Tenancy for cause, or if there are urgent concerns, the landlord may apply for an early end to tenancy pursuant to section 56 of the *Act*.

Conclusion

The tenant's application to cancel the Notice to End Tenancy has been granted. The landlord's application for an order of possession is dismissed. No filing fees are awarded.

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: November 03, 2016

Residential Tenancy Branch