



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On September 8, 2016, the Tenant submitted an Application for Dispute Resolution asking for more time to make an application to cancel a 1 Month Notice to End Tenancy for Cause dated August 28, 2016, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Tenant has applied for more time to make an application to cancel a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) dated August 28, 2016. The Landlords testified that the 1 Month Notice was served on the Tenant in person on August 31, 2016. The Tenant testified that she received the 1 Month Notice on August 31, 2016.

The Tenant applied to dispute the 1 Month Notice on September 8, 2016. I find that the Tenant disputed the 1 Month Notice within the required time frame. The Tenant's request for more time to dispute a notice to end tenancy is not required.

The Tenant provided documentary evidence of a letter from her Doctor dated September 12, 2016. The Tenant testified that she did not provide a copy of the letter

to the Landlord. Since the Landlord has not received a copy of the letter, the letter will not be considered in this hearing.

Although the Tenant's Application does not include a request to cancel a Notice to End Tenancy issued for cause, I find that her application requesting more time to make application to cancel a Notice to End Tenancy is clear that it was her intention to dispute the 1 Month Notice.

During the hearing the Landlord testified that there was a previous arbitration hearing involving the parties and that the Landlords have continued to have problems with the Tenant since then.

I informed the parties present that I am the Arbitrator that conducted the previous hearing and issued the Decision that the tenancy will continue until ended in accordance with the Act.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties disagreed on the date the tenancy began. The Tenant testified that the tenancy began in 1994, and the Landlord testified that the tenancy began in 1996. Both parties agree that the tenancy is a month to month tenancy. Both parties testified that current rent in the amount of \$987.00 is due on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$362.50

The Landlords testified that the Tenant has been involved in incidents of disturbing other occupants by screaming and making noise. They submitted that they have had other issues with the Tenant regarding garbage and with the security of the building.

The Landlord submitted that the Tenant has disturbed other occupants by applying oil to windows and mirrors within the rental property and making the sign of crosses using the oil. The Landlords submitted that Tenants have moved out of the building because of the concerns they have with the Tenant regarding her noise and behaviour.

The Landlord testified that due to their concerns they issued the Tenant a 1 Month Notice To End Tenancy For Cause dated August 28, 2016.

The Landlord provided a copy of the 1 Month Notice that was issued to the Tenant. The Landlord selected the following reasons for ending the tenancy in the 1 Month Notice:

- 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
- Tenant has engaged in illegal activity that has, or is likely to:
 - Damage the Landlord's property
- Tenant has caused extraordinary damage to the unit/site property /park

The Landlord testified that following the issuance of the 1 Month Notice there have been further disturbances from the Tenant.

The Landlord provided documentary evidence of caution letters sent to the Tenant on the following dates:

- August 24, 2016, regarding incidents of screaming and knocking on the walls disturbing another Tenant over a three day period.
- August 29, 2016, regarding posting notices around the building and painting crosses with holy oil on windows and mirrors in the building. Propping open the east rear door and garbage on the deck.
- September 1, 2016, regarding an incident of screaming that is disturbing other tenants in the building.

The Landlord also provided documentary evidence of a ledger of incidents and letters of incident reports regarding the Tenant.

- On August 24, 2016, Incident of excessive noise
- On August 26, 2016, Incident of notes posted saying "House of God"
- On August 26, 2016, Incident of holy oil and signs of crosses
- On August 29, 2016, Incident of garbage on patio
- On August 31, 2016, served Tenant with 1 month Notice
- On August 31, 2016, Incident of screaming and loud noises

- On September 1, 2016 Incident report of very loud vocal outbursts the night prior
- On September 1, 2016 Incident report of strange behaviour the night prior
- September 2, 2016, Police and social worker requested entry into Tenants unit
- September 22, 2016, Police requested entry into Tenants unit to check on her

The Landlord provided a copy of a letter from a resident dated August 26, 2016, that states the Tenant sprinkled holy oil on the carpets and stairwells and the resident feels it is un-nerving that the Tenant is performing religious ceremonies and lurking about.

The Landlord provided a copy of a letter dated Sept 1, 2016, from a resident of the rental property that states the Tenant had an episode of very loud vocal outbursts that caused the occupant to have to leave her apartment and go for coffee. The letter indicates the Tenant had to get away from the random yells and banging. The letter indicates the police were called and they attended but the Tenant refused them access. The letter indicates the police told her to quiet down.

The Landlord submitted seven photocopied pictures. The pictures are black and white and the resolution is of poor quality.

In response, the Tenant submits that she has had mental health issues since the 1970's. She submitted that she was taking the wrong medication between May 2016, and August 2016. She submitted that her doctor now has her on a new medication since September 2016, and that she is now stable. She submits that her doctor feels that her mental health has corrected.

The Tenant testified that she prays and chants in her unit but has not been screaming. She submitted that since May 2016 her rental unit is cleaned regularly by cleaners and presents no health risk.

The Tenant testified that she did not prop open the rear doors in the rental building.

The Tenant testified that she believes the Landlord wants to end her tenancy so they can raise the rent. She stated that if she is a lousy tenant then why did they offer her another unit to rent.

The Tenant provided a letter from her Doctor dated October 12, 2016, regarding the Tenants medical condition. The letter states it has taken the last few months to for her medication routine to stabilize and her mental health to better function. The letter states

that the Tenant is receiving supervised injections for her schizophrenia. The letters states that in June the Tenant stated she satisfied with the current medication routine and she is stable. The letter states that mental illness should be treated and supported, not evicted.

The Tenant provided a letter dated September 12, 2016 from a psychiatrist K.D. that states the Tenant decompensated over the month preceding her eviction notice. K.D. states that the treatment team who are able to see the Tenant on a daily basis were not aware of her disruptive behaviours and therefore unable to intervene.

The Tenant provided a letter from owner of a cleaning company that provides cleaning services for the Tenant. The Letter states that the cleanliness of the Tenant's home is above standard and there have never been any concerns about smell or dirt.

The Tenant provided four witnesses who provided affirmed testimony. The witnesses testified to the cleanliness of the Tenants rental unit and stated that the Tenant is coping well and is stable now.

In response to the Tenant's testimony and evidence the Landlord responded that they have never evicted a Tenant on the basis of a mental health issue, rather they evict on the basis of the behaviour of a Tenant.

The Landlord raised a concern with the reliability of the Tenant's evidence. The Landlord identified that the Doctor's letter dated October 12, 2016 indicates the tenant was stable as of June 29, 2016.

The Landlord testified that the issues with the Tenant keep repeating themselves, and the Landlord is again having to deal with issues regarding the Tenant.

The Tenants legal advocate I.J. submitted that the Tenant has not significantly interfered with or unreasonably disturbed another occupant or the Landlord. He submitted that the Tenants behaviour was a just a temporary inconvenience. He submitted that she is a good Tenant who was unstable but has had no episodes since her medication has changed. He submitted that she prays but does not yell and scream. He submitted that the Tenant admits to drawing the crosses on the windows and mirrors but this does not constitute significant interference. He submitted that the Tenant keeps her unit clean and she does not present a health or safety risk, and she has never put the Landlords property at risk. He submitted that the Landlord has provided no evidence that the Tenant has damaged the property.

The Landlord responded that the Tenant has disturbed other occupants and referred to the documentary evidence of the letter from a resident dated September 1, 2016.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Policy Guideline #6 Right to Quiet Enjoyment states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I do not accept the Tenant's argument that the Landlord is trying to evict her to raise the rent. The Tenant stated that if she is a bad Tenant then why has the Landlord offered her another rental unit. I find that the Landlord did not offer the Tenant another rental unit with respect to the incidents surrounding the 1 Month Notice dated August 28, 2016. The Tenant is referring to an offer that the Landlord made with respect to the previous hearing involving different testimony and evidence.

The Tenant and her witnesses testified that the Tenant is now stable. The letter from the Tenants psychiatrist conflicts with the letter from her Doctor regarding the stability of the Tenants mental health. The psychiatrist letter dated September 12, 2016, states that the Tenant decompensated over the month preceding her eviction notice and the treatment team was unable to intervene. The Doctors letter dated October 12, 2016, states that in June the Tenant stated she satisfied with the current medication routine and she is stable. The Tenant testified that she was on the wrong medication from May 2016 to August 2016. The Landlord's evidence indicates there were two incidents in September, where the police attended the unit and the Tenant would not answer the door.

I find that that the Landlord has established that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord has provided incident reports and letters of complaint from other occupants which indicate they have been disturbed by the Tenant yelling, strange behavior of drawing crosses with holy oil, and banging. One incident involved disturbances over a three day period. The Landlord issued caution letters to the Tenant regarding these issues. I prefer the evidence of the Landlord. I assign the Landlord's evidence more weight as I find that the Tenant's mental health was not stable during the period of time the incidents occurred. I find the disturbances by the Tenant were unreasonable. I do not find that the Tenants behavior was a temporary inconvenience.

I dismiss the Tenant's Application to cancel the 1 Month Notice To End Tenancy For Cause dated August 28, 2016. Since the Tenancy is ending under this cause, there is no need to consider the other causes within the Notice.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. I find that the 1 month Notice complies with the requirements for form and content.

I find that the Landlord is entitled to an order of possession. The date on the 1 Month Notice that the Tenant must move out of the rental unit has passed. The effective date of the Notice is September 30, 2016. Therefore the Landlord is granted an order of possession effective two (2) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Since the Tenant was not successful in her Application to cancel the 1 Month Notice, recovery of the filing is not awarded to the Tenant.

Conclusion

I grant the Landlord an order of possession effective two (2) days after service on the Tenant. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 18, 2016

Residential Tenancy Branch