



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAVIS MCMULLEN HOUSING CORPORATION CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was personally served with the notice of hearing package on September 20, 2016. The landlord's agent (the landlord) confirmed service of the notice of hearing package as claimed by the tenant. Neither party submitted any documentary evidence for the hearing. It was confirmed with both parties that neither party submitted a copy of the 1 Month Notice to End Tenancy.

As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that the landlord was properly served and is deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

While I have turned my mind to all of the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties provided undisputed affirmed testimony that this tenancy began on October 24, 2014 on a month-to-month basis. The monthly rent is currently \$320.00 payable on the 1st day of each month. A security deposit of \$306.30 was paid.

Both parties confirmed that the landlord served the tenant with a 1 Month Notice dated September 8, 2016 which was served to the tenant on September 8, 2016 by placing it in the tenant's mailbox. The tenant confirmed receiving it in her mailbox on September 9, 2016. The 1 Month Notice displays an effective end of tenancy date of October 31, 2016 and sets out three reasons for cause listed as:

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 claims that 3 warning letters were served to the tenant regarding noise complaints and putting the safety of other occupants and the landlord's property at risk. The landlord provided affirmed testimony that a warning letter was served to the tenant in April 2016 after receiving 2 noise complaints in which loud noise/conversations were made by the tenant or her guest(s) on April 7 and April 25th. The landlord also stated that a second warning letter in July 2016 was issued after a noise complaint of the tenant's guest sleeping on the patio on July 6, 2016. The landlord stated that this guest had put the landlord's property at risk as well as other occupant's safety when he was viewed removing safety scaffolding and moving it to allow him to park his motorcycle. The landlord stated that a third warning letter was served to the tenant in September 2016 after receiving 2 noise complaints regarding the tenant on August 30, 2016 and again on September 7, 2016.

The tenant disputes the circumstances of the landlord's claims stating that although she acknowledges that the complaints were filed, she argues that the noise levels were not excessive. The tenant confirmed in her direct testimony that on each occasion mentioned by the landlord that she was having a loud conversation with her friend and also with her son. The tenant also argued that there was no motorcycle but instead her friend had an electric scooter and that she was present when two wooden pallets were moved. The tenant argues that she was never cautioned that continued complaints could result in an end to her tenancy and that no safety scaffolding was touched. The

tenant stated that she also works in housing and is familiar with the process. The tenant argues that the complaints were all from one individual.

The landlord clarified that the 5 complaints filed were from 4 different individuals. The landlord also clarified that in the second and third warning letters, the tenant was cautioned that her actions were “impacting the building negatively”. It was also clarified that the warning letters contained a caution that “if there were further complaints” that it could be “putting her housing at risk”.

The tenant confirmed the content of the warning letters as accurate.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Sections 47 (1) (d) (i), (ii) and (iii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential 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.

Both parties have confirmed that the landlord served the tenant with the 1 Month Notice dated September 8, 2016 by placing it in the tenant's mailbox. As neither party has raised any issues regarding service, I am satisfied that the tenant is deemed served as per the Act.

In this case, the landlord has provided evidence that multiple complaints were filed by 4 different occupants of excessive noise by the tenant or her guests. The tenant has acknowledged that the complaints were filed, but argues against the circumstances of the landlord's claims. The tenant argued that there was no excessive noise.

In this case, I find that on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant's behaviour provides grounds for any of the three grounds indicated by the landlord on the 1 Month Notice. The tenant “being

familiar with the process” as she works in housing should have been aware that repeated warnings of disturbances would have eventually resulted in an end to the tenancy. The landlord has provided sufficient evidence to satisfy me on the reasons for cause as the tenant has confirmed that she received each warning letter and that she understood the contents of each. The tenant’s argument that the noise was not excessive is redundant as the level of noise was sufficient to disturb 4 other occupants. The tenant’s application to cancel the 1 Month Notice dated September 8, 2016 is dismissed.

I also find that the landlord’s 1 Month Notice complies with section 52 of the Act and find it valid.

Pursuant to section 55(1) of the Act the tenant’s application for dispute to cancel the 1 Month Notice having been dismissed entitles the landlord to an order of possession.

Conclusion

The tenant’s application to cancel the 1 Month Notice is dismissed.
The 1 Month Notice dated September 8, 2016 is upheld.
The landlord is granted an order of possession.

This order must be served upon the tenant. 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 16, 2016

Residential Tenancy Branch