



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; the landlord's agent and two witnesses for the landlord.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The landlords submitted the following relevant documents into evidence:

- A copy of a tenancy agreement signed by the parties on January 13, 2014 for a 5 month and 1 day fixed term tenancy beginning on January 13, 2014 that converted to a month to month tenancy on June 14, 2014 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid;
- Copies of 5 warning letters to the tenant regarding noise and other complaints during the course of the tenancy. The letters are dated April 2, 2015; May 25, 2015; August 10, 2015; February 15, 2016; and September 12, 2016; and

- A copy of a 1 Month Notice to End Tenancy for Cause issued on October 27, 2016 with an effective vacancy date of November 30, 2016 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant acknowledges receipt of 4 of the 5 warning letters. She stated that she did not receive the warning letter dated September 12, 2016. The landlord testified that she posted the letter on the door of the rental unit on that date and it was in response to complaints she had received on September 7, 2016. The tenant stated that she never discussed any of the warning letters with the landlords after she received them during the tenancy.

The tenant also acknowledges that she received the 1 Month Notice to End Tenancy for Cause on October 27, 2016.

The landlord submitted that there have been a number of noise and disturbance complaints regarding this tenant nearly since the start of her tenancy. Despite the repeated warning letters on file, the landlord's agent submitted that because she just began her position with the landlord on September 6, 2016 she opted to give the tenant a final warning letter in response to the complaints she received on September 7, 2016.

The tenant submitted that she did not think the actions taken by the landlord were fair. She stated that she was not made aware of the specific complaints against her at any time during the tenancy until she received the landlord's evidence. She also did not understand how she could have complaints against her during the time she was pregnant.

The tenant confirmed that on the night of October 26 and morning of October 27, 2016 she did have guests in her rental unit. She stated that her guests were trying, early in the evening, to have a guy in the parking lot leave the property by talking to him out the window. She also acknowledges that she did have people in her unit into the morning hours and that during this time two sisters were fighting.

The tenant acknowledged police arrived around 3 in the morning and that they asked the tenant to quieten things down and she did.

The landlord's two witnesses both confirmed the events of October 25 and October 27, 2016. However, they testified that once the police left the noise started up again and continued until they had to get up in the morning.

The witnesses both testified that these disturbances have been ongoing since the start of the tenant's tenancy. They acknowledged that after they would make complaints

things would quieten down for a while but that they would start up again after a little while.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

From the evidence and testimony of both parties, I find, on a balance of probabilities the tenant has, over the course of the tenancy conducted herself and her guests in a manner that has disturbed other residents of the residential property.

I am also satisfied that the tenant has been warned on several occasions that the type of behaviour of loud music; yelling and partying would not be tolerate and that her tenancy could end if she continued to disturb other tenants in this manner.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

As such, in regard to the warning letter of September 12, 2016 I find, based on the tenant's submission that she had not received the letter and in the absence of any confirming evidence that the landlord can confirm the tenant received it, the tenant may not have received this warning letter.

However, I am satisfied, based on the tenant's own testimony, that she had received warning letters at least 4 times previously. I am also satisfied that the tenant was informed that failure to stop causing these disturbances could result in the end of her tenancy.

Based on the tenant's own testimony and the witness's' testimony regarding the events of October 26, and 27 I find the landlord has established that the tenant has caused unreasonable disturbances of other occupants in the residential property.

I also find that the tenant allowed these disturbances despite several warnings that such behaviour could give rise to the landlord having cause to end the tenancy.

I also find from the tenant's own testimony that she received the 1 Month Notice to End Tenancy for Cause on October 27, 2016. As a result of these findings, I find the tenancy will end on November 30, 2016. Therefore, I dismiss the tenant's Application for Dispute Resolution.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on October 27, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **November 30, 2016 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 22, 2016

Residential Tenancy Branch

