



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, FF

Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy for cause received dated March 18, 2016 and an extension of time to make his application.

In the second application the landlord seeks an order of possession pursuant to that Notice and recovery of his filing fee.

The Notice, dated March 18, 2016, claims that the tenant or a person permitted on the property by him, a) has significantly interfered with or unreasonably disturbed another occupant or the landlord, b) has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and c) has put the landlord's property at significant risk.

Under s. 47 of the *Residential Tenancy Act* (the "Act") each of these three grounds is a lawful reason for ending a tenancy.

At the start of the hearing counsel for the landlord waived any issue about the timeliness of the tenant's application and so the question of an extension of time for the tenant to apply became moot.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has given good cause for ending his tenancy?

Background and Evidence

The rental unit is a one bedroom apartment in an older, mixed commercial/residential building.

There does not appear to be a written tenancy agreement. The tenancy started in or around 1991. Currently the monthly rent is \$465.00, due on the first of each month, in advance. The landlord says there is no security deposit. The tenant says there is but cannot say how much. He says he has a receipt for it but did not have it readily available for reference.

The tenant is the former building manager or caretaker at the building. He was dismissed in December 2016.

At about the same time, the landlord issued to the tenant a one month Notice to End Tenancy for cause, dated December 16, 2015. The statutory grounds for that Notice were the same as for this one.

That matter came on for hearing on February 12, 2016. The arbitrator found that during the period November 5 to December 8, 2015 the tenant created disturbances by screaming and yelling obscenities in the early hours of the morning. However, she determined that the tenant had not been give notification of the complaints or written warnings that "such behaviours were unacceptable." She granted the tenant's application but put the tenant on notice that if such behaviour occurred in the future her decision would form part of the landlord's case.

The landlord's witness Mr. E.R. testified that she has been living next door to the tenant since May 2015. She says her interactions with the tenant while he was the caretaker were generally unpleasant. He would bang on the common wall dividing her bedroom from his. Because of the noise from the tenant's rental unit she uses earplugs to help her sleep. Her complaints were at least part of the basis for the December 16, 2015 Notice.

It would appear that after the February 12, 2016 arbitration and warning to the tenant, all went well for about a month. Ms. E.R. says that in the late evening of March 17, while she slept, with earplugs, she was awoken by repetitive knocking on her bedroom wall. She could hear the tenant yelling and sporadically knocking on the wall. She called the police. The tenant came out of his apartment and banged on her front door, yelling "at the top of his lungs." She thinks he was intoxicated. The tenant returned to his rental unit but continued to knock on her bedroom wall and yell. The police arrived, calmed her down and spoke with the tenant.

She says that as soon as the police left, the tenant "started again." She called the police again. She says she was extremely afraid and uncomfortable in her home. The police arrived again, spoke to the tenant and left. She says that once the police left the tenant started yelling again and went out on his balcony and yelled from there. She called the police once more then she

packed a bag and left for four or five days. She says the police advised her to find another place to live.

She thinks she was suffering from post traumatic stress disorder after the incident and had to have a friend stay with her when she returned to her rental unit.

She has lost work because of the disruptions caused by the tenant. She is unhappy that the tenant was not evicted after the February 12 hearing. But for him she likes where she lives. Since the March 17 incident she has formally asked the landlord for permission to sublet her rental unit for a year because of him. She produced her email message to the landlord, dated March 28, 2016, containing that request.

Mr. A.D. lives in the rental unit below the tenant. He testifies that the tenant as a caretaker was not pleasant to him, calling him names and threatening to evict him for no reason.

He says that on March 17, 2016 the tenant was shouting on the balcony and filming with his phone. He says the tenant's conduct was "freaking everybody out." On other nights the tenant stamps on his floor (Mr. A.D.'s ceiling) and shouts "f*** you" and plays his music through the night. He thinks that the police arrived with a "SWAT" team on March 17 and that the tenant was taken away in an ambulance. He says he can't sleep because of the tenant's disruption. The tenant never stops his disrupting behaviour for more than ten days at a time. He is frightened to live with someone like him.

He provided and swore to the truth of a chronology describing incidents involving the tenant prior to the December 12, 2015 Notice and afterwards on December 19 and January 5, 6 and 8, 2016, all involving the tenant causing disruption and all but the last one involving the attendance of the police to the tenant's suite.

He says that since the February 12 hearing and decision, nothing has changed.
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The landlord's building manager Ms. A.C. testified about a stream of twenty offensive emails she received from the tenant back in 2015. The actual emails were not produced as evidence.

The tenant Mr. A.C. testified. He denies the allegations generally. He intimates that both Ms. E.R. and Mr. A.D. are not good tenants. He presents an unsigned character reference dated January 27, 2016 from another building occupant. As stated at hearing, such a testimonial, as character evidence, is of little value in the determination of the facts of this dispute. It is of even less value when unsigned by its author.

Mr. A.C. presented an email character reference from another building occupant, Mr. C.H., purportedly on behalf of himself and his mother, dated January 27, 2016 describing the tenant as an exceptional caretaker and building manager.

Mr. A.C. says that in fact Mr. A.D. has been disturbing him “100 to 200 times” and that while he was building manager he issued Mr. A.D. a warning and then a Notice to End Tenancy for cause. It would appear that Mr. A.D. disputed that Notice and at the hearing of that dispute Mr. A.D. claimed the tenant did not have the landlord’s approval to evict him. The matter was adjourned but then the tenant lost his position as building manager. He did not attend the reconvened hearing. No one else on behalf of the landlord attended either and the Notice was cancelled.

Mr. A.C. acknowledges that on March 17, 2016 the police attended his rental unit because of Ms. E.R.’s complaint but he says it was a false complaint. In fact, while he was standing on the sidewalk with the police, the tenant called in another complaint that he was banging on her wall, which obviously was a false complaint because he was not then in his rental unit. He denies “terrorizing” or bothering Ms. E.R. He says she is making it all up.

Analysis

The evidence that is relevant to the present issue are the occurrences, if any, between the date of the December 12, 2015 Notice and the present Notice issued March 18, 2016. Known occurrences prior to December 12, 2015 should properly have been dealt with at the February 12 hearing. The March 18 Notice in question here stands or falls on circumstances as they existed on the date of that Notice.

It has been found as a fact by the previous arbitrator that the tenant was screaming and yelling obscenities in the early morning hours during the period November 5 to December 8, 2015. Her decision gave the tenant a very clear warning that such conduct significantly interfered with and unreasonably disturbed other occupants of the building and that it must not be repeated.

I accept the evidence of Ms. E.R. She was forthright in her testimony and on cross-examination and she provided detailed particulars of the incident on March 17. The fact that she has asked the landlord to permit her to sublet her rental unit, in order to avoid the tenant Mr. A.C. bolsters her credibility. That is not consistent with the actions of a person making false claims.

I find that Ms. E.R. was significantly interfered with and unreasonably disturbed by the intentional actions of Mr. A.C. on the evening of March 17, 2016 when he repeatedly banged or knocked on her bedroom wall, yelled at her and attended and banged on her front door in an agitated state. I find that the Notice to End Tenancy dated March 18, 2016 was a proper and justified Notice.

Conclusion

The tenant’s application to cancel the Notice to End Tenancy dated March 18, 2016 is dismissed.

As the result of the Notice this tenancy ended April 30, 2016 and the landlord is entitled to an order of possession.

The tenant's conduct warrants an immediate order of possession. The tenant has paid and the landlord has accepted occupation rent for the month of November. In these circumstances the order of possession will be effective November 30, 2016.

The landlord is entitled to recover the \$100.00 filing fee for this application. It is not clear that the landlord holds any deposit money from which to recover it and so I grant the landlord a monetary award of \$100.00 against the tenant.

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 10, 2016

Residential Tenancy Branch