



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ISLAND WOMEN AGAINST VIOLENCE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking cancellation of the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice"), pursuant to section 47.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. The landlord appeared with two witnesses, Witness I.G. and Witness S.J., who were excluded from the hearing prior to giving their affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

- Should the landlord's One Month Notice be cancelled?

Background and Evidence

The undisputed evidence established that a month to month tenancy started on August 1, 2011. The rental property is a seniors housing facility which has an office on site out of which the landlord and other staff work.

The landlord served a One Month Notice dated October 31, 2016, with an effective date of November 30, 2016, in person by delivering a copy to the tenant on October 31, 2016.

The landlord's reasons given for ending the tenancy are that:

- the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; and

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submitted photographs, emails and letters in support of her testimony regarding the complaints about the tenant's disruptive behaviour.

The tenant submitted two character reference letters and brief written statements from two other occupants. The tenant did not have any witnesses who gave oral testimony.

Landlord's Testimony:

The landlord is the Executive Director of the organization that took over operations and management of the seniors housing facility. The landlord testified that she works onsite in their admin/outreach office where clients attend for counselling. The landlord's complaints against the tenant are summarized as follows:

- that the tenant is loud, verbally abusive and abrasive with staff and other occupants. The landlord testified that there have been many complaints from other residents about this behaviour causing other residents to be fearful of interactions with the tenant;
- that the tenant frequently and repeatedly drops in to the counselling office disturbing the landlord and staff by yelling and/or making loud accusations;
- that the tenant makes frequent accusations against other staff and occupants accusing them of entering her suite or allowing others to do so. The landlord testified that these repeated false accusations are disturbing to those who are targeted; and
- that the tenant has been posting offensive notes in visible places from her unit. The landlord testified that the messages contain profanity, accusations, disturbing words and language that the landlord and other residents find disturbing.

The landlord testified that other residents have contacted her and shared their fears, anxiety and stress as a result of the tenant's behaviour. The landlord testified that these other occupants are afraid to come forward out of fear that they will be the target of retaliatory behaviours by the tenant.

The landlord sent the tenant a letter dated March 10, 2015 bringing several complaints to the attention of the tenant asking the tenant to cease and desist. While the tenant

complied with some of the items in the letter, the landlord testified that the tenant's behaviour has not changed causing the landlord to want to end the tenancy.

The landlord testified that the tenant has continued to write and display offensive notes that are disturbing to the landlord and other residents. The landlord testified that the tenant also continues to be verbally aggressive and abusive with staff and other residents.

The posted notes that were the subject of the complaints set out in the landlord's letter to the tenant dated March 10, 2015 were photographed and submitted as evidence by the landlord.

The landlord testified that the following messages were posted by the tenant and visible to the public:

- "YOU HAGS AREN'T MY LANDLORDS SO KEEP OUT". The landlord testified that this message was posted to the tenant's front window.
- "STAY OUT RETARDS YOUR JOKES ARE SICK! SO ARE U. SHAME ON PEOPLE WHO STEAL FR CHILDREN". The landlord testified that this message was posted on the tenant's front door.
- "No illegal entry" "moo carol" and "fuck stiks". The landlord testified that "moo carol" was referring to the past president of the society that operated the rental unit previously. The landlord testified that this message was posted to the tenant's front door.
- "I hope you rot in hell for stealing from me and my grandkids. I really hope you do." The landlord testified that this message was posted from the tenant's bedroom window which faces Witness I.G.'s unit.

The landlord testified that the tenant posted the following messages after receiving the letter dated March 10, 2015. Photographs of these messages were also submitted as evidence.

Note #1:

In the summer of 2016, the landlord testified that the tenant had posted a message on the tenant's adjoining patio fence shared with her neighbor, Witness I.G. The note states: "IF YOU ARE HUNGRY GO WORK U BIG MOOSE AND QUIT STEALING FR ME + MY GRANDKIDS" ("Note #1").

Note #2:

In the summer of 2016, the landlord testified that the tenant had posted a message inside the tenant's window that faces Witness I.G.'s unit. The message specifically names the Witness I.G. and then states: "GO BACK TO THE WHOREHOUSE YOU CREPT OUT OF AND KEEP YOUR ZOMBIE AWAY FR HERE PLEASE" ("Note #2").

Note #3:

On August 9, 2016, the landlord testified that the tenant had posted a message in the upper bedroom window of the tenant's rental unit. The note states: "Quit snooping in my locker, Hag" (Note #3").

Note #4

In the fall of 2016, the landlord testified that the tenant posted a note inside her vehicle that read "Stay Out Bitch". The landlord testified that this note was displayed in a place that faced the vehicle belonging to Witness I.G. ("Note #4").

Witness I.G. Testimony:

Witness I.G. testified that she is an occupant who resides in the rental unit next door to the tenant. Witness I.G. testified that the tenant has exhibited chronic belligerent behaviour for the past six years which has escalated over time. Witness I.G. was very emotionally distraught when giving her testimony. She testified that she has been the target of the tenant's false accusations as well as what she describes as intrusive and corruptive paranoia. Witness I.G. testified that the tenant has changed her locks, put up wire, spy cameras, alarm systems and barricades.

Witness I.G. testified that the tenant has targeted her with false accusations about having broken into the tenant's unit. As a result of being a target, Witness I.G. testified that she has been subjected to repetitive abusive harassment that has significantly interfered with her peaceful and quiet enjoyment and caused unreasonable disturbance.

A summary of the complaints from this witness are outlined as follows:

- that the tenant is verbally abusive and spews foul language when the witness is going about her own business;

- the tenant has written abusive notes that the tenant has posted in her unit for the public to see;
- that the witness is fearful for her safety as a result of hearing from an RCMP officer in May 2015 that the tenant stated to the officer that if she ever saw the witness near her door, she would punch her in the face. The RCMP officer signed a short note to confirm that such a discussion took place between the officer and the witness;
- in July 2016 on more than one occasion, the tenant deposited something with a foul smell outside the witness' bedroom window and outside her entrance way. The foul smell was so strong that the witness couldn't sleep in her own bed for a few days each time until the smell disappeared; and
- the tenant has hacked her trees, bushes, plants, and thrown vinegar on her plants/trees.

Witness I.G. confirmed the testimony of the landlord in regards to the messages that were photographed and submitted as evidence.

Witness I.G. acknowledged that she didn't directly observe the tenant depositing the foul smelling substance or the vinegar on her property and plants. Similarly, Witness I.G. acknowledged that she didn't directly observe the tenant hacking her trees, bushes and plants.

Witness J.S. Testimony:

Witness J.S. testified that he has been a maintenance worker for the landlord for six years and he deals with many occupants as part of his job. Witness J.S. testified that the tenant has falsely accused him of entering her unit without permission even when the witness had no way of accessing her unit after she changed the locks. The witness testified that he is very uncomfortable when being accused of things that aren't true and that this has created barriers to doing his job. In answering questions put to him by counsel for the tenant, the witness testified that he requires someone else present as a witness to observe the repairs to the tenant's unit to protect himself against more false allegations.

Tenant's Testimony:

The tenant acknowledged receipt of the letter dated March 10, 2015 bringing the complaints to her attention and asking her to cease and desist. The tenant testified that she promptly complied with the requests set out in the letter including taking down the

posted messages shown in the photographs. The tenant first testified that she had not posted a note on her property since receiving the letter. However, she later changed her testimony when she acknowledged having posted some notes after receiving the letter dated March 10, 2015 requesting that she stop.

The following is the tenant's testimony regarding the notes posted after receiving the letter dated March 10, 2015.

In regards to Note #1, the tenant did not recall the note and denied posting it.

In regards to Note #2, the tenant denied posting the note.

In regards to Note #3, the tenant acknowledged having posted this message in her upper bedroom window. The tenant testified that she took down the note after one day as she knew she wasn't allowed to post notes. The tenant testified that she posted the message as she was concerned about her possessions in her locker that she didn't feel were safe.

In regards to Note #4, the tenant acknowledged having posted this message inside her vehicle. The tenant testified that she posted this message because someone was going into her vehicle and an item went missing from her glove box. She testified that she took the sign down after a day or so as she knew that she would get in trouble if she left it up.

The tenant testified that she doesn't yell, swear or use abusive language. The tenant denied using abusive language towards Witness I.G.

The tenant denied the claims made by Witness J.S. The tenant testified that she only asked the witness if he'd seen her missing lock.

The tenant acknowledged the bad odour that Witness I.G. described, however, the tenant testified that she suffered with the smell as well and that she doesn't know what caused it. The tenant thought they might be having rat problems.

The tenant did admit to calling the landlord a hag when she was given the notice to end tenancy.

The tenant submitted a letter from one couple who are also residents. They state that their relationship with the tenant is cordial and respectful. The tenant also submitted a letter from another resident who states that she has never heard noises coming from

the tenant's rental unit. The tenant also submitted two character references, one from a family member and one from an employer/friend.

Counsel for the tenant made the following submissions on behalf of the tenant:

- that certain allegations against the tenant made by Witness I.G. cannot be proven as the incidents were not directly observed by her;
- that the eviction process for breach of a material term set out in Policy Guideline #8 was not properly followed by the landlord;
- that the March 10, 2015 letter is dated and shouldn't be relied upon to evict the tenant; and
- that the tenant complied with the requests set out in the letter dated March 10, 2015.

Analysis

Based upon the above testimony and documentary evidence, and on a balance of probabilities, I find as follows.

I find that the messages set out in the posted notes are disturbing and offensive.

I find that the tenant posted all the messages that the landlord and Witness I.G. attribute to her. The tenant denied posting the messages in Note #1 and Note #2, however, I do not find the tenant's testimony credible. In making this finding, I have taken into consideration the observation that each of these two posted messages includes a short form "FR" which is also found in one of the messages that the tenant acknowledged having written and posted before receiving the letter from the landlord. The writing in these two notes, as shown in the photographs, closely resembles the writing in the messages acknowledged by the tenant. Accordingly, I accept the testimony of the landlord and Witness I.G. that the tenant also posted these two messages.

I find that the content of the messages support the testimony of the landlord, Witness I.G. and Witness J.S., that the tenant has a persistent pattern of accusing residents and staff of stealing from her.

I accept the testimony of the landlord and Witness I.G. that the tenant is verbally abusive, abrasive and spews foul language, particularly, in light of the offensive and foul language admittedly used by the tenant in her messages. The tenant herself, admitted, to calling the landlord a hag when being served with the One Month Notice.

I find that the tenant issued a threat of bodily harm against Witness I.G. to an RCMP officer which has caused Witness I.G. to be fearful. This was confirmed in writing by the RCMP officer. The tenant did not address this complaint in her testimony.

Pursuant to Policy Guideline #6, tenants are entitled to quiet enjoyment which includes freedom from unreasonable disturbance. Temporary discomfort or inconvenience does not constitute a basis for a breach of entitlement to quiet enjoyment. However, frequent and ongoing interference or unreasonable disturbances may form a basis for such a breach.

I find that there is sufficient evidence to satisfy me that the tenant has unreasonably disturbed the landlord and other residents interfering with their right to quiet enjoyment of their premises. The actions of the tenant in posting offensive messages from her rental unit; subjecting residents and staff to repeated accusations; being verbally aggressive in her interactions; and making a threat of bodily harm against Witness I.G. supports such a finding. Thus, I do not need to make any other findings in regards to the balance of the complaints raised by the landlord and Witness I.G. which were disputed by the tenant. Similarly, I need not consider whether the tenant breached a material term of the tenancy agreement, nor the submissions of counsel in this regard.

I find that the One Month Notice complies with s.52 of the *Act* and that the landlord served the One Month Notice in accordance with the *Act*. Therefore, I find that the tenant is not entitled to cancellation of the One Month Notice and I uphold the notice to end the tenancy.

Pursuant to section 55 of the *Act*, when the landlord's notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's Application, I am required to grant an order of possession. As a result, I find the landlord is entitled to an order of possession which shall take effect December 31, 2016 at 1:00 p.m.

Conclusion

I dismiss the tenant's Application and uphold the One Month Notice.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **December 31, 2016 at 1:00 p.m.**, subject to service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 23, 2016

Residential Tenancy Branch