



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for the recovery of the filing fee. The tenant applied for an order to cancel the notice to end tenancy. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy at this unit started in September 1995. On October 28, 2016, the landlord served the tenant with a notice to end tenancy for cause. The reasons for the notice were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health and safety and a lawful right or interest of another occupant or the landlord, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and has breached a material term of the tenancy agreement. The tenant disputed the notice in a timely manner.

The landlord stated that the notice was served on the tenant following an incident on October 28, 2016. An occupant (SK) of the building complex complained of noise disturbances from the tenant on the night of October 27, 2016. SK stated that during the night the tenant was talking loudly in an angry manner and was stomping.

Sometime during the disturbance, SK reported that she heard the sound of a window pane being shattered.

The tenant stated that he was on an international call which would explain why he was calling in the middle of the night. He also admitted to being angry with the person on the other end and was pacing while on the phone. The tenant stated that since then he has not made international calls and this was a one-time incident.

The tenant denied the allegation of having put his fist through the window pane. He stated that the window was problematic and he used a stick to prop it up. The tenant stated that when he tried to adjust the window, he accidentally broke it. The tenant offered to pay for the repair and explained that the injury to his hand was from trying to clear the pieces of broken glass. The landlord agreed that the window was problematic.

The landlord stated that a building manager visited the unit after he received the complaint and the tenant was verbally abusive and threatened to kill him. The manager called the police who spoke with the tenant and called for an ambulance out of concern for the cut on his hand. The police took no further action against the tenant.

The landlord stated that the tenant is constantly verbally abusive to other occupants and the landlord's staff. The last warning letter was served on the tenant in January 2016 when he was verbally abusive to construction workers, hired by the landlord to work on the property. The tenant stated that he had asked them to keep it down as he was sleeping after a night shift. The landlord also filed copies of other warning letters that were served to the tenant in 2011 and 2010.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the reasons cited on the notice.

The landlord cited the incident that took place on October 27, 2016 as the main reason for the notice to end tenancy. The landlord also referred to the warning letter given to the tenant in January 2016.

Based on all the evidence before me and the sworn testimony of the landlord, I find that the tenant did cause a disturbance when he spoke loudly on the phone in the middle of the night and paced around the rental unit causing stomping noises. However I find that this is a one-time incident in a tenancy that is over 20 years old. I also accept that the tenant may be occasionally verbally abusive to other occupants and the landlord's staff.

Based on all the evidence before me, I accept that the tenant behaved badly on the dates in question but I am not satisfied that the actions of the tenant justify bringing this 20 plus year old tenancy to an end. From the evidence filed by the landlord it appears that the incident on October 28, 2016 was isolated and not an ongoing pattern of behaviour for this tenant.

Accordingly I find that the landlord has not proven her case, to end this tenancy. I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated October 28, 2016. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving the landlord and other occupants, reason to complain. I find it timely to put the tenants on notice that, if such behaviours of verbal abuse were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Since the landlord has not proven her case, she must bear the cost of filing her application.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: December 16, 2016

Residential Tenancy Branch