



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC RP

Introduction:

Both parties attended the hearing and affirmed personal service for both the Notice to End the Tenancy for cause dated November 28, 2016 to be effective December 31, 2016 and the tenant's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant applies to cancel the Notice to End Tenancy for cause. I find her Application was filed on December 7, 2016 which is within the time limits permitted by section 47 of the *Residential Act* (the Act).

Preliminary Issue:

Counsel for the tenant submitted that she asked the landlord for particulars about the causes for ending the tenancy and the landlord did not supply them. She has requested the Police File and requested an adjournment from the landlord but they did not consent. I made the Decision to proceed with hearing the matter. I note that hearings under the *Residential Act* are designed to be informal hearings where parties may submit their disputes and give evidence without benefit of counsel. Rules of Discovery do not apply. In any case, I find the tenant knew the details of the case against her as she had discussions with the landlord and was involved in the events.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties and counsel for the tenant attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was an extensive hearing lasting one hour and 40 minutes with much documentary evidence, photographs and video surveillance on a USB stick.

It is undisputed the tenancy began September 1, 2008 and continues. The current rent is subsidized to \$582 monthly and a security deposit of \$450 was paid in August 2008. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant or a person permitted on the property by the tenant
 - (i) has significantly interfered with or unreasonably disturbed another occupant or the landlord;

- (ii) has seriously jeopardized the health or safety or lawful rights of another occupant or the landlord;
- (iii) has put the landlord's property at significant risk,
- b) The tenant or a person permitted on the property by the tenant has engaged in illegal activity that
- (iv) adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord;
- v) damages the landlord's property
- vii) jeopardizes a lawful right or interest of another occupant or the landlord.

The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord said that a frequent male visitor of the tenant was using keys to access the building. It is an express and material term of the lease that tenants are not to give or loan their keys (clause 31) to anyone as many vulnerable women reside in the building. Tenants must keep their doors locked and not allow copies to be made of keys. The rules of the subsidized units are that visitors are not allowed to stay more than 14 days in a whole year (clause 13). The landlord said he spoke to the tenant and asked for the male visitor's resident address and she said he was "couch surfing" at his sister's. He took her word that she would not have him over more than 14 days in a year. However, he continues to visit her. He has keys to access the underground garage where he smokes (evidence on USB key) and other tenants complain about this. A neighbour complains that the tenant and this male visitor smoke on her balcony (exhibit 22) in violation of current legislation prohibiting it within 6 meters of a doorway, window or air intake. The same letter notes the tenant was reminded of the no smoking policy of the building. The male visitor described as her boyfriend was also seen smoking within six meters of the building and neighbours are concerned it is affecting their health.

The landlord issued a number of warning letters, one on September 12, 2016, one on September 26, 2016 and one on October 12, 2016. The tenant said she had only received the last letter. She denied the property manager had talked with her and that she said she was wrong and would pay for the damage. She said she only met him once on September 25, 2016 and on November 28, 2016 when he gave her the Notice to End Tenancy. The landlord disputed her account and said he would not have known the boyfriend was allegedly staying with his sister if she had not told him on September 26, 2016 (handwritten note in evidence). He said he told her how to dispute the Notice

to End Tenancy and gave her an advocate's name and telephone number. He said she never mentioned she had broken up with the boyfriend until her lawyer got involved and her story changed. He said the tenant confessed to him that she had let the boyfriend in that day, she loved him and hoped to change him. There was no suggestion in their conversations that the boyfriend had broken into the unit that day. He asks how the boyfriend got into her unit if she had not given him the keys as there was no forced entry. He notes her workers are concerned and would prefer she relocate because there is a danger if the boyfriend returns. He notes he had discussions with her advocate and the tenant and made some efforts to get the tenant into alternative housing.

The tenant is described as a mother of three children who has been the victim of violence in the past. Her children were staying elsewhere at the time of the Police incident. In her Victim Application Form, she describes the crime as domestic. She notes she has been diagnosed with depression and mental health issues. A mental health counsellor, an Acting manager of Work Safe BC, New Start Bridging, the Executive Director of mom2mom and a constituency assistant for an MLA wrote letters of support for the tenant noting her need of a safe, secure home.

The landlord said he knows of the challenges faced by the tenant and had tried to help her. He could have ended the tenancy for repeated late payment of rent many times but chose not to proceed. He has given her many chances. The boyfriend continued to come over although the tenant contends she tried to end the relationship and finally did on November 24, 2016. There was a serious incident on the evening of November 25 and morning of Nov. 26, 2016 when the tenant says she was sleeping and the boyfriend gained entrance, she thinks through the patio door. She asked him to leave and went back to sleep. She says he took her keys, phone and purse and car without authority but returned next morning with her phone and keys. When she asked him to leave, he caused the fire alarm to be set off and later smashed the windows of her unit and threatened to kill her. During the incident, she says she contacted the Police and they arrested and charged him.

The landlord contends the tenant is responsible for the actions of persons permitted on the property by her. He recounts the events of November 25 and 26, 2016 differently. He said the boyfriend came over and she let him in. Later he took her car keys and smashed the car. Rather than call the Police, she went to a neighbour friend. She said she went there to use the neighbour's phone to find her own phone. The boyfriend came back and used the keys to enter her unit, there was a disagreement and the fire alarm was pulled beside her unit about 6 a.m. The landlord emphasized the disruption of the peaceful enjoyment of other residents by this action as they all had to vacate the

building. The USB stick shows young families and a crying woman huddled outside shivering, many in their pajamas or night time clothes. The landlord emphasizes there was no sign of forced entry according to the Police. He said the boyfriend was banging on the doors of other vulnerable women who reside in the building and they were scared. After the disagreement with the tenant, the boyfriend took a hockey stick and smashed seven windows and a patio door which is estimated to cost \$2442.33 to repair. The boyfriend was arrested and charged with mischief to property and taking a car without the consent of the owner. Apparently he is out on bail and forbidden to contact the tenant or her children or to go within 100 meters of her apartment building.

The landlord provided a USB stick of the video surveillance cameras showing the boyfriend's mother and him freely entering the building with keys, showing him smoking in the underground garage and driving off in the car. He said the tenant could have called the Police at any time and there was a station nearby but she did not. He said he had many meetings with the tenant and she confirmed she had let the boyfriend in that day, she said she loved him and hoped she could change him. There was no suggestion in their conversations that he had broken in. The USB shows his mother and the boyfriend coming out of the tenant's unit and finding a cab that day.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes it and the burden of proof on the balance of probabilities then falls to the landlord to prove the alleged causes. I note that any one of the causes listed in section 47 if proved is sufficient to end the tenancy. The first cause listed is that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the weight of the evidence is that the tenant permitted on the property a boyfriend who significantly interfered and unreasonably disturbed other vulnerable women and families in the building. The tenant admitted in the hearing that her boyfriend set off the fire alarm. I find this caused many women and young children to have to evacuate the building in the early hours. The video of them huddled outside shivering with one crying illustrated vividly to me how significant and unreasonable the disturbance was. I also note in the same video that the boyfriend was walking among them thrusting his hand out for them to shake. Some of them appeared to be intimidated by his gestures.

I find further that the boyfriend's actions in breaking the windows and patio door have caused extraordinary damage to the unit or property. Although the tenant denied in the hearing that she said she would pay for it, I find her mental health counsellor noted in her support letter that the tenant said this. I find this calls into question the consistency

of the tenant's evidence. I find the counsellor's notation supports the landlord's submissions that the tenant confessed she had let him into the building and felt responsible.

I also find she breached a material term of her tenancy agreement in giving her boyfriend the keys to access the building. In the USB of video surveillance, I note the boyfriend confidently approaching the building using keys to let himself in and also using them in the underground garage. Although she denies receiving the letter of September 26, 2016, I prefer the evidence of the landlord that this letter was given to her as it is supported by the handwritten notes of the manager on the same date stating he spoke with her concerning smoking on her balcony and her boyfriend's use of keys. It is noted that she said then that the boyfriend was living with his sister and they would monitor the unit to see if this was the case. I find this clause 31 of her lease regarding allowing use of keys to unauthorized persons is of such importance as to be considered to be a material term of the lease. I find it is particularly important for this association houses many vulnerable women who have been victims of violence and need assurance of safety. By giving her keys to this boyfriend who has proven to be violent, I find the tenant breached this material term.

In this letter, the tenant was also warned of the smoking in prohibited areas and her boyfriend's breach of this rule. Counsel for the tenant contended if they were monitoring her unit, why was there not more follow up? I find there was follow up with the letter of October 12, 2016 warning that she was seen on her balcony smoking which seriously bothered her neighbour who is allergic to cigarette smoke. The boyfriend was also seen smoking too close to the building two weeks prior.

While I note the many letters of support submitted by the tenant and her medical issues, I find the interests of both parties have to be considered. The landlord is a charitable association that gives subsidized housing particularly to vulnerable women. It is the landlord's duty pursuant to section 28 of the Act to protect the peaceful enjoyment and safety of all their residents. I find the tenant was warned about allowing the boyfriend free access to the building and allowing him to use the keys. I find the weight of the evidence is that she continued to admit him and allow him to use her keys in breach of her agreement and the events of November 25 and 26 were a consequence of her permitting him on the property. While she may have been a victim of his actions, I find they were a result of her allowing him onto the property and their subsequent disagreement.

I note the Counsel for the applicant ably represented the tenant to the point of coaching her at times when she was nervous. Although she provided some previous decisions of

the Residential Tenancy Branch that are favourable to tenants' situations, I find I am not bound by previous arbitrator's decisions. Each case under the Act is decided on its own merits. In this case, I find the weight of the evidence supports the landlord's reasons for ending the tenancy pursuant to section 47 of the Act. I find the tenancy terminated on December 31, 2016.

I therefore dismiss the tenant's application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 47 and has upheld the Notice. As a result I grant the landlord an Order for Possession effective February 28, 2017 which will allow the tenant some extra time to find alternative housing.

As the tenancy is terminated, I decline to order the landlord to do repairs to the property.

Conclusion:

I grant the landlord an Order for Possession effective February 28, 2017. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application without recovery of the filing fee due to lack of success.

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: January 12, 2017

Residential Tenancy Branch