



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, OLC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application.

The Tenant stated that on January 03, 2017 she personally served the Landlord with the Application for Dispute Resolution, the Notice of Hearing, and 5 pages of evidence that were submitted to the Residential Tenancy Branch with the Application. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 17, 2017 the Landlord submitted 7 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were placed under the Tenant's door approximately eight days prior to the hearing. The Tenant acknowledged receiving these documents on January 16, 2017 and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on December 01, 2014;
- the Tenant is currently required to pay \$750.00 in rent by the first day of each month;
- on December 30, 2016 the Landlord placed a One Month Notice to End Tenancy for Cause, dated December 30, 2016, under the door of the rental unit;
- the Notice to End Tenancy declared that the Tenant must vacate by January 31, 2017; and
- the Notice to End Tenancy declared that the Landlord was ending the tenancy because the rental unit must be vacated to comply with a government order.

The Landlord stated that he has not received an order requiring him to ensure the rental unit is vacated. He stated that he received a letter from his local municipality in which he received information on the city's secondary suite program. He submitted a copy of the information on the secondary suite program to the Residential Tenancy Branch but he did not submit a copy of the letter he received.

The Tenant stated that she does not believe that the information on the secondary suite program is sufficient to conclude that her tenancy must end.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit. The Tenant contends that the Landlord has harassed her for several months by sending her "lies" and "constant" text messages. The Tenant submitted a series of text messages exchanged between the parties. The Tenant stated that she was disturbed by these text messages, in part, because some were sent in that late evening and the Landlord knows she goes to bed early and, in part, because the information in the text messages was inaccurate. The Tenant acknowledged that she never told the Landlord that the text messages were bothering her and she never told him that he could not communicate with her via text message.

The Landlord stated that all of the text messages were sent in good faith and were not intended to disturb the Tenant. He stated that the Tenant never told him that his text messages were bothering her and she never asked him not to communicate with her via text message. He stated that some of the text messages were sent around 10:00 or 11:00 p.m. and he has heard the Tenant awake on more than one occasion at that time.

At the hearing on January 24, 2017 the Landlord agreed not to communicate with the Tenant, via text, in the future.

Analysis

Section 47(k) of the *Act* authorizes a landlord to end a tenancy if the unit must be vacated to comply with an order of a federal, British Columbia, regional, or municipal government authority. As there is no evidence that a federal, British Columbia, regional,

or municipal government authority has issued an order requiring the rental unit to be vacated, I find that the Landlord has not established that he has the right to end the tenancy pursuant to section 47(k) of the *Act*.

In adjudicating this matter I have placed no weight on the Landlord's submission that the rental unit must be vacated because it does not comply with local zoning bylaws. There is nothing in the *Act* that authorizes a landlord to end a tenancy simply because a rental unit does not comply with zoning bylaws.

As the Landlord has submitted insufficient evidence to show that he has the right to end the tenancy pursuant to section 47(k) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause that is dated December 30, 2016.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the text messages exchanged between the Tenant and the Landlord did not breach the Tenant's right to the quiet enjoyment of the rental unit. Although it is clear from the text messages that the Landlord does not fully understand the *Act*, I cannot conclude that the messages were sent with intent to "harass" or disturb the Tenant.

Conversely, I find that the text messages show that the Tenant understands the *Act* relatively well. Given that the Tenant appears to understand the *Act*, I cannot conclude that she was unduly disturbed by any mistakes the Landlord made when he was attempting to end the tenancy or increase the rent.

I find that the Landlord's tone in the text messages was respectful. In the absence of any evidence to show that the Tenant told the Landlord that he should not communicate with her by text message, I find that the content of the text messages did not constitute an unreasonable disturbance.

I find that even if the Landlord did send the Tenant a text message after she went to bed the Tenant could have minimized the impact of that "disturbance" by either turning down the sound on her phone when she went to sleep or by asking the Landlord not to text after a certain time.

After considering the communication between the Landlord and the Tenant in its entirety, I find that there has not been any significant breach to the Tenant's right to the quiet enjoyment of her rental unit. I therefore dismiss the application for compensation for a breach of her right to the quiet enjoyment of the rental unit.

I find that the Tenant's Application for Dispute Resolution has some merit and that she is entitled to recover the cost of filing this Application.

Conclusion

The One Month Notice to End Tenancy for Cause, dated December 30, 2016, is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

I hereby authorize the Tenant to deduct \$100.00 from one rent payment as compensation for the fee paid to file this Application for Dispute Resolution.

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 24, 2017

Residential Tenancy Branch