



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC

For the landlord - OPC

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for Cause. The landlord applied for Order of Possession for cause.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant was permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice?
- Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy originally started on February 01, 2009 with the tenant and her sister as named tenants on an agreement. On October 01, 2016 the tenant's sister moved out and this tenant continued her tenancy as a sole tenant. Rent for this unit is \$900.00 per month due on the 1st of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) on February 22, 2017 by posting the Notice to the tenant's door. A copy of the Notice has been provided in documentary evidence and provides the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit*
- 2) The tenant or a person permitted on the residential property by the tenant has*
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- 3) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) Damaged the landlords' property*
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) Jeopardized a lawful right or interest of another occupant or the landlord*
- 4) The tenant has assigned or sublet the rental unit without the landlords' written consent*

The landlord testified that the tenancy allows for the tenant and her two children to occupy the rental unit. The tenant has allowed other people to occupy the unit and last summer the landlord observed three teenagers who appeared to be living there. The landlord lives upstairs and can often hear different voices in the tenant's unit. The tenant did remove these people in the middle of the night last year and currently the landlord is not sure who else is living there but believes there is another man there.

The landlord testified that she is often disturbed by the tenant and others in the tenant's unit. they make so much noise they have woken the landlord and a neighbouring tenant up. Further to this the tenant and others have been smoking marijuana both inside and outside the unit which affects the landlord's asthma. This is now seriously affecting the landlord's health. Every morning the tenant wakes the landlord as she speaks so loudly and the tenant's neighbour has also been disturbed by this.

The landlord testified that there have been occasions where the tenant has tried to break down the landlord's front door and she has shouted and yelled at the landlord. The tenant has also damaged the landlord's front and back door by throwing stones at the doors. When the tenant is smoking marijuana the landlord is frightened of the tenant as she comes to attack the landlord. The tenant has called the police.

The landlord testified that the tenant and her friends stand outside at the front of the landlord's house and smoke marijuana and cigarettes. They throw their butts down and one week the landlord had to pick up over 200 cigarette butts. This could cause damage to the landlord's property as they are thrown at the window frames. The landlord testified that when the teenagers were living there in the tenant's unit last summer they also caused disturbances by doing drugs, smoking and drinking outside late at night. The landlord believes that these teenagers were between 13 and 16 years old.

The landlord testified that the tenant has assigned or sublet the rental unit. In late August the tenant called the landlord and said she had sublet a room to another person and was using the rent money she got for food. The tenant has now renting a room to a man. The tenant's daughter also told the landlord that whenever she loses her home she moves in with her mother and last year the tenant's eldest daughter was seen living at the tenant's unit on several occasions.

The landlord requested an Order of Possession effective on March 31, 2017.

The tenant disputed the landlord's claims. The tenant testified that she had verbal permission from the landlord to rent a room to a couple. They lived with the tenant for three months from August, 2016. At that time everything was friendly between the tenant and landlord. The tenant disputed that she had three teenagers living there and testified that these were friends of her sons visiting and her son is 18 years old. The tenant disputed that anyone else lives in the unit except her and her two children. Her oldest daughter used to come and visit and stay for a short time but has not lived in the unit.

The tenant disputed that she or her children have caused disturbances. The tenant testified that her children are in bed by 8.00 p.m. and 10.00 p.m. each night and there are no loud conversations or noise. The tenant testified that she has a medical card to smoke medical marijuana. The tenant was asked to provide evidence of this card after the hearing concluded.

The tenant testified that she has been harassed by the landlord and has never tried to break down the landlord's door or throw stones at the landlord's door. The tenant agrees she has argued with the landlord and tried to talk to her but the landlord goes inside. The tenant has knocked on the landlord's door but the landlord harasses the tenant and yells at her. The tenant testified that she has had to call the police about the landlord trying to push her way into the tenant's unit five or six times and has one police file number 17-32971. A copy of this file number has not been provided in documentary evidence. The tenant testified that she does not have the money to get a police report.

The tenant testified that she does not have friends that come over and she smokes marijuana outside alone or in her bathroom with the fan turned on. When the tenant started the tenancy she had informed the landlord that she had a licence to smoke medical marijuana and the landlord was alright with this. The tenant agreed that the young couple that lived with her for three months did stand outside and smoke marijuana and cigarettes. The tenant did ask them to pick up their butts. The tenant disputed that there are teenagers outside the landlord's unit doing drugs, smoking and drinking. The tenant testified that she does not allow her son to drink while underage.

The tenant seeks an Order to have the Notice cancelled and for the tenancy to continue.

The landlord testified that when they started the agreement the tenant told the landlord that she did not do drugs. Later the tenant informed the landlord that she smoked medical marijuana and the landlord told her she must smoke this off the property. The tenant then started to bring friends and they all started to smoke it outside and in the tenant's unit. The landlord disputed that she ever gave the tenant permission to sublet a room in her unit.

The landlord calls her witness who is another tenant living next door to this tenant. The witness testified that he has had worse disturbances in the summer last year but recently he has also

been disturbed by shouting and swearing and a number of people all coming and going from the tenant's unit. There appears to be different people living there at different times. The witness testified that when he leaves his unit he comes back and there is a strong smell of marijuana. Even the witness's visitors comment on the smell. The smell of marijuana is constant in his unit. The witness testified that although he has not seen the tenant smoking marijuana he has seen other people who appear to be living in the tenant's unit smoking it.

The witness testified that he has heard trouble between the landlord and tenant and he does not know who starts the arguments but this does make him very nervous. The witness testified that he has heard stones being thrown at the landlord's unit but has not seen the tenant doing this. The witness testified that he is often disturbed late at night and this usually takes the form of shouting and swearing and pounding noise from someone banging on the tenant's door and windows. At other times the tenant has get togethers outside and this has disturbed the witness while he has been sleeping. Once an ambulance came and they pounded on the witness's door looking for the tenant. The police have also been to the tenant's unit.

The tenant asked the witness if he knew the dates that she had parties. The witnesses testified that he does not know the dates or who comes to the parties but he thinks it is people living at the tenant's unit.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After consideration of the above, I find I am satisfied from the evidence before me from the landlord and her witness that the tenant has allowed an unreasonable number of occupants in the rental unit. This tenancy is for the tenant and two of her children and by the tenant's own admission she rented a room to two others for three months last year. The tenant has insufficient evidence to show that she had the landlord's written permission to do so. Therefore I must conclude that the tenant sublet a room in the rental unit to these other people and possibly another man without the landlord's written permission. I find when taking the landlord's testimony over that of the tenants that it is mainly one person's word against that of the other; however, when I also consider into this the landlord's witness's testimony I find on a balance of probabilities that I prefer the landlord's evidence over that of the tenant.

I am also satisfied that the tenant or persons permitted on the property by the tenant have caused disturbances to the landlord and another tenant and I am satisfied that the tenant has been smoking an illegal substance or allowing others to smoke marijuana in or on the landlord's property. The tenant was asked to provide proof of her license or card to smoke medical marijuana; the evidence the tenant provided is not a license it is a practitioner's statement. The only box checked on this statement is that the tenant has reported that her symptoms are helped by cannabis. The tenant's practitioner has not checked any other boxes in which they recommend cannabis for the tenant or that the tenant should have access to cannabis. Currently marijuana is still considered to be an illegal substance in British Columbia and as such should not be smoked inside a rental unit or on the landlord's property.

Therefore I find on a balance of probabilities that one or more reasons provided on the Notice have sufficient merit to end this tenancy. Accordingly, I find the tenant's application is dismissed. The landlord's application is allowed. The landlord has been issued with an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord has been issued an Order of Possession effective **on March 31, 2017** pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: March 23, 2017

Residential Tenancy Branch