



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witnesses for each Party gave their evidence under oath.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started June 15, 2009. On March 6, 2017 the Landlord gave the Tenant a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door. The reasons indicated on the Notice are that the Tenant has allowed an unreasonable number of occupants in the unit and that the Tenant or person permitted on the property by the Tenant has caused significant interference, unreasonable disturbance, serious jeopardy or significant risk to the property.

The Landlord states that the Tenant has allowed her daughter to live in the unit, a bachelor suite. The Landlord states that the tenancy agreement restricts occupancy in the unit to the Tenant. It is noted that section 14 of the tenancy agreement sets out the

provisions in relation to occupants and guest and I note that provisions allow the Landlord to consent to an additional occupant. The Landlord states that it is unreasonable for the daughter to reside in the unit because the policy of the Landlord's funding agent provides that only one person can live in a bachelor suite. The Landlord states that the unit is too small for two beds and that it is unreasonable for a daughter and mother to share a bed. The Landlord declined to offer evidence to support why this would be unreasonable. The Landlord states that the unit is not subsidized and that extra occupants are not approved for bachelor suites due to the policy that they must adhere to from their funding agent.

The Tenant states that her daughter recently moved into the city and is currently homeless and couch surfing at various locations. The Tenant states that her daughter has visited her off and on over the past 2 to 3 weeks but does not live there. The Tenant states that she does share her queen size bed with her daughter when she comes to visit. The Tenant's Witness, a support worker for the Tenant, states that she was told by the Tenant that the daughter is homeless.

The Landlord provides photos and states that video evidence shows the Tenant's daughter buzzing in to the building and then entering with a lit cigarette and a back pack. No videos were provided for this hearing. The Landlord states that at some point they received a call that a back pack was left in the common area. The Landlord believes the back pack was left by the daughter based on a camera depiction of the Tenant at the entry at around 2:00 am in the morning, the presence of the backpack with the Tenant as shown by video or photo evidence and because the backpack contents included the identification of the Tenant's daughter. The Landlord states that the video evidence shows that the daughter appears to be intoxicated. The Landlord argues that the daughter caused serious jeopardy to the safety of the Landlord and other occupants by leaving the back pack and dropping cigarettes.

The Landlord states that the interior of the backpack was inspected by the Landlord who found needles with some residue. The Landlord states that they do not know what the

residue was. The Landlord states that the bag was then taken to the police. The Landlord states that other tenants were put at significant risk of harm by the needles. The Landlord states that the residents in the building are generally poor or disabled and that there is therefore a reasonable likelihood that those residents would take advantage of the situation to reach into the bag and therefore hurt themselves. When asked whether the Landlord was giving evidence that poor people are more likely to be thieves the Landlord restated that "sometimes being poor makes you more likely to take advantage of opportunities" and again that "it is not unreasonable to think that people in dire straits would take advantage of situations". The Landlord did not indicate whether it was another tenant who reported the bag or whether that person searched the bag before reporting it.

The Landlord's Witness, a police officer, states that the back pack was brought to him for examination and after taking strict safety precautions the Witness searched the bag and found uncapped needles. The Witness states that there is no evidence of whether or not the owner of the back pack has a medical disability. The Witness states that other drug paraphernalia for chemical drugs were present in the backpack. The Witness described that paraphernalia. The Witness states that although the presence of needles and other items would indicate drug use the Witness does not know whether the needles were used for drugs. The Witness states that the Landlord's video was viewed by the Witness and the Witness states that the Tenant's daughter appeared to be under the influence of drugs or alcohol. The Witness states that while he cannot offer any evidence of the daughter's criminal status or drug use the Witness states that the bag was dangerous given the presence of the uncapped needles improperly stored as any person who makes contact with such needles runs the risk of being faced with a significant health issue. The Witness states that no needles were found to be sticking out of the bag and that no drugs were found in the bag.

The Tenant's advocate argues that there was no significant risk created or caused by the Tenant's daughter. There is no evidence of protruding needles or of any contaminant on the needles. While a person may be pricked with a needle point this

cannot be considered significant harm in itself. The Advocate argues that there were no charges, no drugs and no evidence to show that the needles carried any disease thereby creating any significant risk or serious jeopardy.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, there are an unreasonable number of occupants in a rental unit or 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
- (iii) put the landlord's property at significant risk.

The Landlord's photo evidence of the daughter waiting outside the unit to be given entry indicates that the daughter does not have keys to the unit. Given this evidence and considering the Tenant's evidence that her daughter does not live there I find that the Landlord has failed to substantiate on a balance of probabilities that the daughter is occupying the unit. Even if the daughter were occupying the unit, the Landlord provided no evidence of why two persons in a bachelor unit would be an unreasonable occupancy other than the policy guidelines of their funding agent. I consider that policy on a matter is not evidence of that matter. The Landlord provided no evidence of anything unreasonable with a daughter sharing a bed with her mother and I take the Landlord's opinion on this matter to be the provision of personal ideas or values and not evidence. For these reasons I find that even if the Tenant's daughter has been residing in the unit the Landlord has not provided evidence of an unreasonable number of occupants as contemplated by the Act. Given the provisions of the tenancy agreement, the daughter's presence may constitute a breach of the tenancy agreement however I note the occupancy provisions in the tenancy agreement also provides for consent for extra occupants. This possibility or allowance in the tenancy agreement tends to

contradict the Landlord's evidence that they cannot at any time have more than one person in a bachelor suite. Nonetheless a breach of a material term of the tenancy is not one of the reasons indicated on the Notice and the provisions of the tenancy agreement are therefore not relevant to determining the validity of the Notice.

There is no video or photo evidence showing intoxication or lit cigarettes being dropped inside the building. Even if the daughter was under the influence of drugs or alcohol as credibly opined by the Landlord's Witness there is no evidence that the intoxicated state of the Tenant caused or could foreseeably cause any harm to anyone.

The Landlord's evidence of the likelihood of poor and disabled people taking advantage of items left in a building that do not belong to them is completely unsupported evidence. I find this evidence to be a highly disturbing supposition given the nature of the Landlord's business of providing housing to poor and disabled persons. In fact the Landlord's evidence is that they were notified of the abandoned backpack and given that it was in the common area I find it likely was reported by one of those poor or disabled residents. The evidence is that the only person who reached into the backpack, other than the police officer who took precautions as trained, was the Landlord. There is no evidence that the Landlord had to search the backpack and I note the Landlord's own evidence that video was available to identify the owner of the backpack. I consider that anyone without authority who reaches into a closed item that does not belong to them and in circumstances where the owner of the item can be identified is acting recklessly and must accept some responsibility if harm does occur. There is however no evidence that the unattended backpack caused any significant harm or disturbance to any of the tenants or the Landlord. While I accept, given the presence of the items found in the bag, that the Tenant's daughter is somehow involved in drug use, there is no evidence that this involvement caused anyone any harm, disturbance or risk. Finally this was a one-time incident of a person leaving a backpack in a common area and while some other person may have been placed in possible danger by possibly dangerous contents, this is simply not sufficient evidence of cause to take the serious step of ending the Tenant's long term tenancy. For all the above

reasons I find the Notice is not valid and that the Tenant is entitled to its cancellation.
The tenancy continues.

Conclusion

The Notice is cancelled and of no effect.

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: April 13, 2017

Residential Tenancy Branch