Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, OPC, FF

Introduction

This hearing was convened to deal with cross-applications under the *Residential Tenancy Act* (the "Act") based on a 1 Month Notice to End Tenancy for Cause dated February 26, 2017 (the "1 Month Notice").

The tenant applied for more time to apply to cancel the 1 Month Notice, for an order cancelling the 1 Month Notice, for authorization to reduce rent, and for recovery of the application filing fee. At the outset of the hearing the tenant withdrew her application for more time as she was within the applicable time limits. She also withdrew her application for recovery of the filing fee.

The landlord's application, received by the Residential Tenancy Branch ("RTB") on March 10, 2017, is for an order of possession based on the 1 Month Notice and for authorization to recover the application filing fee.

Both of the landlords and the tenant attended the hearing. Service of the parties' respective applications and supporting materials was not at issue.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to make submissions, and to respond to the submissions of the other party.

I have reviewed and considered all evidence and testimony before me that met the requirements of the Rules of Procedure, but refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

If not, are the landlords entitled to an order of possession?

Are the landlords entitled to recover the filing fees for this application from the tenant?

Is the tenant entitled to an order allowing for the reduction of rent?

Background and Evidence

A copy of the tenancy agreement was submitted by the landlord. It was agreed that this month to month tenancy began in 2012. Originally the agreement was between the current tenant and other landlords. However, the current landlords assumed the rights and obligations under the tenancy agreement when they purchased the rental property. home.

The tenant lives below the current landlords. Monthly rent is currently $870.00 due on the first day of each month.

The rental agreement includes an addendum. It prohibits pet without the express written consent of the landlords. It prohibits smoking “within the premises” but appears to allow smoking outside the premises and states that cigarette butts must be disposed of “in a safe and clean manner.” The tenant acknowledged that the tenancy agreement prohibits pets and prohibits smoking inside of the rental unit.

It was agreed that the landlords personally served the tenant with the 1 Month Notice on February 26, 2017. The 1 Month Notice alleges 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” and that the tenant has breached a material term of the contract and has failed to correct that breach after written notice of the breach.

Uncorrected breach of material term

The landlords say that “no smoking” and “no pets” are material terms of the tenancy agreement. The landlords wrote the tenant a letter dated February 18, 2017 warning her about “multiple breaches of the tenancy agreement: Additional tenant(s) living in the apartment without our permission; Excessive noise, arguing, foul language; smoking on the premises; Having a pet.” In this letter the landlords gave the tenant until

February 23, 2017 to correct the alleged breaches. The landlords' letter further states: "Also screaming and foul language towards us will not be tolerated from this date forward. One such incident occurred on February 13, 2017."

The landlords testified that the tenant has not corrected the breaches. A cat is still on the property and the tenant's son is smoking just outside the rental unit so that the smoke enters into the landlords' upstairs unit.

The tenant wrote a "to whom it may concern" letter dated March 8, 2017, which was included in her evidence. It characterizes the landlords' letter of February 18, 2017 as "nothing less than a joke and another way for them to control everything that goes on around this house and has been since the day I moved in."

The tenant's response to the landlords' concern about smoking is that the prior landlord smoked and that her son smokes only outside. The tenant's response to the landlord's concern about pets is that the current landlords are not allergic to animals as they say and that the current landlords' children like her cat. The tenant says there were no issues in this tenancy until the landlords took issue with her offering temporary housing to a young girl.

Significant interference or unreasonable disruption

The landlords also say that the tenant and her 15 year old son are constantly arguing, screaming, and swearing at one another, and that this is disruptive to them and their young children. The landlords submitted six letters from various neighbours and guests regarding the conduct of the tenant and her son. The letters all speak to the disruption caused by the fighting and/or swearing of the tenant and her son or others. Some of the letters are unsigned, which the landlords say is because they understood that including the writer's names would be sufficient. Some of the letters have the writer's contact information on them.

The landlords also submitted a chronology of events between February 10 and early March of this year. On several dates (including February 12, 14, and 21) the landlords record issues with noise coming from the tenant's suite. The tenant has written responses on the landlords' chronology. One of her comments is that the new occupant of her unit "has some medical conditions that cause her to be very loud at times and I am constantly speaking with her about losing it when she is upset. The cursing has gotten a lot better at this time."

In response to the landlords' record of a conflict between the parties around recycling and the tenants' subsequently leaving her door open on purpose to increase hydro usage (for which the landlords are responsible) the tenant has handwritten: "I was pissed off at them both. I wasn't sure what to do. If it wasn't for my son a couple of times I think I might have lost it on them."

The tenant also says that she and her son do have disagreements, but they are not daily, and that the landlords are blowing things out of proportion. She also says that the landlords themselves bang on the ceiling.

The landlords further testified that when they served the tenant with the 1 Month Notice she responded by leaving a gas can by the door, which they perceived as a threat, and by turning the backyard hose on full. The tenant admitted that she was trying to scare the landlords "a bit" by placing the gas can where she did, but said that the gas can was empty and she removed it after a short while and would never do anything to hurt anyone.

The tenant has her own concerns about how the landlords are treating her. She testified that they purposefully bump into her on the stairs.

The tenant's documentary evidence also included written submissions on the state of the rental unit, and the tenant mentioned during the hearing that the landlords themselves were threatening her by refusing to replace her dangerous stove. The tenant also alleges that the landlords have disrupted her enjoyment of her rental unit by partying and using drugs. She says as well that they have been videotaping and photographing her.

Analysis

Section 47(1)(d)(i) of the Act provides that a landlord may end a tenancy for "cause" if the tenant has significantly interfered with or unreasonably disrupted the landlord or another occupant. Based on the oral testimony and the documentary evidence, including the tenant's own admissions during the hearing and her written comments, I find that the tenant has unreasonably disturbed and significantly interfered with the landlords.

The landlords have submitted statements from six different parties documenting the loud arguments and swearing that can be overheard in the landlords' suite. The tenant's written comments acknowledge that the third occupant of her unit is loud. The tenant also admits that she and her son argue and swear. She has further admitted

threatening the landlords upon receipt of the 1 Month Notice. I find that all of this is sufficient to end the tenancy.

As the tenancy will be ended under s. 47(d)(i) of the Act, I do not need to consider whether the tenant has breached a material term of the tenancy and failed to correct that breach after notice from the landlords.

Based on the tenant's unreasonable disturbances and significant interference, I dismiss the tenant's application and uphold the 1 Month Notice. I further allow the landlords' application.

As the landlords' 1 Month Notice is upheld, I grant the landlords a two (2) day order of possession. This tenancy ended on March 31, 2017, the effective date of the 1 Month Notice.

While the tenant has paid rent for April, the landlords have undertaken to repay the tenant on a prorated basis for the days in April that she is not in the rental unit.

Application for reduction of rent by tenant

As there was insufficient time available to deal with the tenant's application to for a reduction in rent, I advised the parties at the hearing that I was severing that application pursuant to Rule 2.3 of the Rules of Procedure.

The tenant may reapply for a monetary order based on loss of enjoyment or use of the rental unit for the months during which she paid full rent. I make no findings with respect to this application at today's hearing.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed and the landlords' application is allowed. The 1 Month Notice is upheld and the tenancy has ended.

I grant an order of possession to the landlord effective two (2) days from the date the landlords choose to serve this order. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

As the tenant has paid April rent, the landlords have undertaken to reimburse her on a prorated basis any days she is not residing in the unit in April. The number of days, if

any,that the tenant is not residing in the unit in April will be determined by the date the landlords choose to serve the order of possession.

As the landlords are successful, I grant the landlords the cost of the filing fee in the amount of $100.00 pursuant to s. 72(1) of the Act. I authorize the landlords to retain $100.00 pursuant to s. 72(2)(b) from the security deposit in full satisfaction of the landlord's recovery of the filing fee. The balance of the security deposit must be dealt with in accordance with the Act after the tenant has vacated the rental unit.

The tenant's application for an order allowing her to reduce rent is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 12, 2017

Residential Tenancy Branch