



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, OPB, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Cause (and/or Breach of a Material Term) pursuant to section 55; and authorization to recover the filing fee for this application from the tenants pursuant to section 72. The tenant applied for cancellation of the landlord's 1 Month Notice to End Tenancy for Unpaid Rent ("1 Month Notice") pursuant to section 47.

Both parties attended this hearing and were able to present testimony, evidence and witnesses. Tenant GS represented both tenants at this hearing. The landlord and his property manager were present. Tenant GS called one witness while the landlord called three witnesses.

The tenant confirmed receipt of the 1 Month Notice: she testified that she knows the notice was dated May 8, 2017 but she was certain she received it on May 16, 2017. I find that the tenant was served with the 1 Month Notice in accordance with section 88 and 90 of the Act. The landlord confirmed receipt of the tenant's Application for Dispute Resolution ("ADR") to cancel the 1 Month Notice and evidentiary materials. The tenant confirmed receipt of the landlord's ADR as well as the two evidentiary packages. I find that the tenant was sufficiently served with the landlord's ADR and the landlord was sufficiently served with the tenant's ADR and evidence in accordance with section 89 and 90 of the Act.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled or is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This tenancy began in October 2014 and continues as of the date of this hearing. The current rental amount of \$740.00 is payable on the 1st of each month. The landlord testified that he continues to hold a \$370.00 security deposit paid by the tenants at the outset of this tenancy. The tenant(s) applied to cancel the landlord's 1 Month Notice to End Tenancy and the landlord sought to enforce the notice and (receive) an Order of Possession for the rental unit.

The landlord issued a 1 Month Notice dated May 8, 2017. A copy of this 1 Month Notice was submitted into evidence for this hearing. In that Notice, requiring the tenant to end this tenancy by June 30, 2017, the landlord cited the following reasons for the issuance of the Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site;

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

Tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord testified that the tenants and their guests have created problems for the building manager and the other occupants of the building. The landlord testified that he is going to lose other tenants/occupants soon if the tenants remain in the rental unit. The building manager provided testimonial evidence on behalf of the landlord. He testified that, for the past 3-5 months, he regularly receives complaints from other tenant/occupants with respect to Tenant GS and her co-tenant, Tenant MS. He testified that the Tenant GS often runs from one unit on the floor below to her own unit at very late hours of the night. He testified that she slams doors and runs up the stairs very loudly.

The building manager testified that the tenants have threatened other tenant/occupants in the building and that he has been threatened as well. The building manager testified that the tenants often get into altercations with the other tenant/occupants. He testified

that the police have been called on a number of occasions with respect to altercations and threats.

The landlord submitted photographs into evidence that were referenced by the building manager. In one security camera photograph, three individuals with their faces covered are entering the residential premises. The police were called after an occupant/tenant was threatened that her throat would be slit. Further, the building manager testified that the incident occurred because the occupant/tenant had stepped on, crushed a pipe/drug paraphernalia belonging to Tenant GS or her guest.

The landlord submitted a warning letter sent to the tenant on January 1, 2017 to request that either the vehicle parked in the residential premises parking lot either be moved or be insured as required by their tenancy agreement. Another similar letter was sent to the tenants on May 23, 2017. The tenant testified that the vehicle is now insured.

The landlord also submitted 6 letters of complaint from tenants/occupants within the residential premises. These neighbours complaints included but were not limited to;

- woken up by noise from tenants' unit and from police presence;
- witness guests of tenants attempting to kick in another occupants' door;
- woken up by Tenant GS screaming obscenities outside;
- Tenant GS up and down the stairs very loudly and late at night;
- Daughter/child of tenant/occupant scared to go outside of the premises;
- Three references to threatening both neighbours and neighbours' dogs;
- Intoxicated behaviour;
- Vandalism in the parking lot by the tenants' guests.

Three witnesses testified on behalf of the landlord. Witness SC wrote a complaint letter that was provided by the landlord. Witness SC also testified that, on one occasion, she stuck her head out the window to tell Tenant GS to be quiet and Tenant GS told her she would slit her throat. She testified that the tenant swung a golf club at her on one occasion. She testified that she has threatened her dog, as well and scared her school aged daughter. Witness RJ testified that he does not live full time in the building but that he is well aware of the issues related to Tenant GS, her co-tenant and their guests. He testified that the mirror was broken off his truck when Tenant GS' guests were in the parking lot. Witness RJ testified that he will likely give notice to vacate his unit if the tenant is going to continue living there. Both Witness RJ and Witness SC testified that they feel threatened and unsafe.

Witness DH testified briefly indicating that he believes the tenants have been given many chances to improve their behaviour. He testified that his roommate has told him that she is considering moving out because she doesn't feel safe around the building. The landlord's property manager testified that he receives regular complaints by telephone or in person regarding the tenants – that those complaints are more frequent than the written complaints. He also testified that he often finds himself meeting with the police about a variety of incidents related to the tenants and their guests.

The tenant testified that she is 60 years old and has had recent surgery. She testified that she is also scheduled for another surgery quite soon and will need to recover for a long period of time (approximately one year). She testified that her co-tenant is a cancer survivor who is still undergoing treatment. She denies the allegations that she is loud and that she is making noise late at night. She testified that she goes to bed early and always tries to be quiet. She testified that when she goes up and down the stairs, she is just going to do laundry.

The tenant testified that it is actually the property manager who threatens people, yells and throws items in anger. She testified that the witnesses in this hearing are his favoured tenants and that the property manager encourages animosity between groups of tenants. The tenant's witness, Witness RL testified that all of the allegations against the tenant GS are unfounded. He testified that he and Tenant GS keep to themselves. He testified that one of the other tenants/witnesses beat him and Tenant GS with an axe handle but the police never ended up attending. He testified that the van is only in the parking spot during the day and not overnight.

The landlord submitted that it should be noted that Witness RL was a former tenant of the residential premises who was evicted. The landlord testified that one of the difficulties they have with the tenants is that Tenant GS regularly allows Witness RL back on to the property.

Analysis

I have considered all of the evidence, in testimony and in documents, submitted by the parties for this hearing. I have considered the submissions of Tenant GS related to her and her co-tenant's health as well as her denial of the allegations against her. I have also considered the testimony of the three witnesses who testified on behalf of the landlord's application as well as the testimony of the property manager. I find that the property manager testified in a calm and candid manner. He did not take any satisfaction from having to be involved in this process and he was not inflammatory in

his testimony. He provided a clear and understated depiction of the state of this tenancy.

The property manager's testimony was supported by the testimony of three witnesses who testified under oath and individually. Witness SC spoke candidly about the threats made to her and her concerns regarding the tenants remaining in the residential premises. Witness DH and Witness RJ both provided evidence that they may choose to end their tenancies if Tenant GS and Tenant MS continue to reside on the premises. The testimony from all of the witnesses, including the property manager was consistent with each other's testimony and consistent with the evidentiary materials submitted by the landlord.

I accept the testimony of the property manager and the landlord's witnesses. I find that the landlord has proven that the Tenant GS, Tenant MS and/or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord with loud noises, loud activities, loud outbursts as well as threats of violence or harm. The landlord has met the burden of proof to show that the 1 Month Notice to End Tenancy was justifiably issued to the tenants.

Based on the landlord's evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for Cause. The testimony of Tenant GS and her witness were not sufficient to dissuade me. In fact, the nature of the comments about the property manager and the other tenants in the premises assisted in convincing me that these tenants cause significant disruption at the residential premises. I dismiss the tenants' application to cancel the Notice to End Tenancy. I find the 1 Month Notice is valid. The 1 Month Notice required the tenant to vacate the premises by June 30, 2017. As that is the date of this hearing and as the tenants have not as of yet vacated the rental unit, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord was successful in this application and therefore I find that the landlord is entitled to recover his filing fee. Pursuant to section 72(2), I allow the landlord to retain a portion of the tenants' security deposit towards the recovery of the \$100.00 filing fee. The tenants are left with a remaining balance of \$270.00 in security deposit to be addressed in accordance with the provisions of section 38 of the Act at the end of this tenancy.

Conclusion

The tenants' application to cancel the Notice to End Tenancy is dismissed.

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I allow the landlord to retain \$100.00 of the tenants' \$370.00 security deposit to recover the filing fee cost. The tenants' remaining security deposit balance is \$270.00.

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: June 30, 2017

Residential Tenancy Branch