



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR

Introduction

This hearing was convened to deal with an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for an order cancelling a 1 Month Notice to End Tenancy for Cause dated May 31, 2017 (the “1 Month Notice”). The tenant’s application also indicated that she was seeking an order that rent be reduced but at the hearing the tenant advised that she was not seeking this.

The tenant attended with a support person who did the majority of the speaking on her behalf. The landlord attended with her daughter and daughter-in-law. Both parties had full opportunity to be heard, to present affirmed testimony, to make submissions, to present documentary evidence, and to respond to the submissions of the other party.

Service of the tenant’s application and notice of hearing was not at issue. Both parties also acknowledged receipt of the evidence of the other party.

Issue(s) to be Decided

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

If not, is the landlord entitled to an order of possession?

Background and Evidence

It was agreed that this tenancy began in 2008 and that rent is 800.00 monthly and due on the first of each month. A security deposit of \$400.00 was paid at the beginning of the tenancy and remains in the landlord’s possession. The landlord did not submit a copy of the written tenancy agreement and advised that she no longer has it.

The 1 Month Notice was served on the tenant personally on May 31, 2017, and the tenant applied to dispute it within the applicable time limit. It has an effective date of June 30, 2017. The tenant has paid rent for August.

The 1 Month Notice indicates 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 “put the landlord’s property at significant risk.”

It also alleges that the tenant or a person permitted on the property has engaged in illegal activity which has affected or is likely to affect other occupants or the landlord. The landlord did not make submissions on the allegedly illegal activity at the hearing.

In the details section the landlord has written that the tenant’s son “has caused problems all of time with drinking, scaring other tenants, broken fence, screaming at his mother. Least six months no proper cleaning of unit. All the windows are covered and lights is on 10-12 hours a day even in summer. I have given her the light bill from the unit over \$900.00.” [Reproduced as written].

The landlord testified that the tenant’s son moved into the rental unit soon after the tenancy began and that he struggles with alcohol. The landlord submitted a property profile report recording the attendance of the fire department at the rental property in 2005 and 2012. Records indicated that in 2012 the fire department was called twice because a pot had been left on the stove by a man who was found asleep in the tenant’s unit. The property profile report also indicated medical first responders attending in 2013 and 2017 but there no additional detail was provided about these calls.

An undated letter from the landlord to the tenant complaining about the tenant’s son was also in evidence. It appears to have been written after the 1 Month Notice was issued. It is written in response to a note from the tenant complaining about the landlord’s yelling at HA about the tenant’s leaving lights on outside. It states: “Please just keep control over your family! Your son is drunk everyday. Leave everyone one else alone . . .” (reproduced as written)

The landlord testified that although the fire department has not attended recently, she is often required to visit the unit downstairs when the tenant leaves for the evening because of smoke caused by the son. The landlord’s daughter testified that she has come into her mother’s suite while her mother has been away and discovered it filled with smoke from the unit downstairs, and that she has also had to call the police when the tenant’s son was passed out in the snow over the winter.

The landlord said that she inspected the unit approximately three weeks ago and at that point the fire alarm appeared to have been disconnected. She speculated that this was why she had not heard the alarm recently.

The landlord also suggested that the tenant, who advised that she is 79 years old, is “losing it” and is not able to control her son. She said she has started writing the tenant notes, some of which were in evidence, because it is not clear that the tenant understands her when she

speaks. The landlord's daughter testified that the tenant has agreed on many occasions move her son out, but that he always comes back.

The landlord also testified that that she is disrupted by arguments between the tenant and her son and that after arguing with his mother, the son leaves the rental unit and argues with other tenants and has also broken a fence. She said that the tenant's son is okay when he is not drinking but he is often intoxicated and that she cannot let her grandchildren into the yard when they are visiting because of this and because he has scabs all over him.

The landlord stated that the tenant's son is intoxicated almost daily and that he has appeared in the shared carport with feces running down his legs. At another time the landlord almost ran the tenant's son over when he was passed out in the carport. The landlord stated that she does not think the tenant understands how serious things are.

The landlord also alleged that the tenant has screamed at her about parking, and that two weeks ago she was woken up in the middle of the night by an interaction between the tenant and the police about the availability of parking.

The landlord also alleged that the tenant drove into a railing on the property, which cost \$475.00 to repair.

The landlord further testified that based on surveillance video, it appears to have been visitors of the tenant or her son who recently stole her purse from her suite at about 8:45 pm.

Lastly, the landlord stated that an electrician she recently hired advised her that the tenant's suite was very unclean and suggested that she inspect it. She said that she inspected it and that it was a "horrendous mess" and that although she has asked the tenant to clean the suite, only the things on the floor have been picked up.

In response, the tenant's friend and advocate, HA, stated that in the last few weeks the area has been smoky. He also said that the fire department has not had to attend at the rental unit since 2008 and that although the tenant's fire alarm is not mounted into the ceiling it is functioning and that the batteries were replaced recently. He further said that the tenant's son's scabs are a skin condition and that he is taking medication and cannot drink while he is on that medication.

The tenant stated that the landlord often comes into her unit because the landlord's fire alarm is ringing, but there is no fire in the tenant's suite. She testified that she has had a couple of arguments with her son but that they do not argue every day. She said the landlord is now attempting to prohibit all of her relatives and other guests from visiting.

The tenant conceded that her son has trouble with alcohol and that he will have to talk to someone about that. HA stated that the tenant does not usually see her son because he leaves

early each morning. The tenant suggested that the landlord could have suggested counselling to her son rather than applying to end the tenancy.

Both the tenant and HA testified that the landlord has treated them disrespectfully. The tenant's evidence included written submissions about conflicts with the landlord and about the condition of the rental property, as well as a letter from the Canadian Mental Health Association's Office of the Advocate to the landlord on behalf of the tenant. That letter advises the landlord about the tenant's right to quiet enjoyment.

Analysis

Section 47(1)(d)(i) and (iii) of the Act allow a landlord to end a tenancy for cause where the tenant, or a person permitted on the property by the tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord or put the landlord's property at significant risk.

There is sufficient evidence to establish that the tenant's son has unreasonably disturbed the landlord. I accept that it is unreasonably disruptive for the landlord, who shares the same residential property with the tenant, to contend with the tenant's son when he is intoxicated. Neither the tenant nor HA challenged the landlord's evidence about the intoxicated conduct.

Additionally, I accept that the tenant's son has put the landlord's property at risk by falling asleep and leaving things cooking on the stove. This is clearly a safety issue. HA suggested that recent smoke in the residential property is the result of fires in the area. However, I do not find this a credible explanation in light of the history of the tenant's son's conduct. I also do not believe that HA is aware of all of the circumstances. His testimony that the fire department has not attended since 2008 is not consistent with the record of calls in 2012.

I also accept that the tenant's anger around the parking issue has been unreasonably disruptive. Both the tenant and the landlord appear to have been disrespectful toward one another. However, the only question before me today is only whether the conduct of the tenant or her son warrants terminating the tenancy.

Based on the above evidence, I find that the tenant's son has significantly interfered with the landlord, who is also an occupant of the rental property, and has put the landlord's property at significant risk. I therefore find that the landlord has established that there is cause to end the tenancy and I uphold the landlord's 1 Month Notice.

Section 55 of the Act requires me to issue an order of possession where the landlord's notice to end tenancy is upheld, provided it complies with s. 52 of the Act. I find that it complies with s. 52. As the tenant has paid rent for August, I issue an order of possession for the landlord effective at **1:00 pm on August 31, 2017.**

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed. The 1 Month Notice is upheld. I issue an order of possession in favour of the landlord effective at **1:00 pm on August 31, 2017.**

The tenant must be served with this order as soon as possible. Should the tenant or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Lastly, I note that tenant is 79 years old and appears to be having some difficulty managing her son, this tenancy, and other aspects of daily life. Her friend HA has been supporting her. The tenant and HA are encouraged to contact the Office of the Advocate of the Canadian Mental Health Association and other agencies for support during this transition.

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: August 15, 2017

Residential Tenancy Branch