



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHILLIWACK KIWANIS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes

Tenant CNC
Landlord OPC

Introduction

This hearing was convened in response to an application by the tenant filed September 01, 2017 to cancel a 1 Month Notice to End Tenancy for Cause (Notice to End) dated August 21, 2017; and, an application by the landlord filed on October 04, 2017 for an Order of Possession in respect to the same Notice to End.

Both applicants attended the conference call hearing and were permitted to make submissions, ask questions, present witnesses and provide testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord acknowledged receiving the tenant's application and notice of hearing package. In addition the landlord acknowledged receiving tenant's late evidence one week before the hearing.

The landlord claims they provided the tenant with their application and all of their evidence to this matter on October 04, 2017 by placing it in the tenant's mailbox. The tenant claims not receiving anything related to this matter from the landlord. The landlord testified they do not have any proof in respect to their claims of service. In the absence of such proof I dismissed the landlord's application and deemed their document evidence inadmissible. None the less, the hearing proceeded on the merits of the tenant's application to cancel the landlord's Notice to End. The parties were informed of the landlord's evidentiary burden in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is there *sufficient* cause to end the tenancy?

Background and Evidence

The tenant submitted a copy of the Notice to End in dispute. The Notice was received by them August 21, 2017 for the following stated reasons;

Tenant or 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.*

The relevant testimony is as follows. The landlord testified that there has been an ongoing relationship conflict between the tenant and their direct neighbour in the residential property which has resulted in phone calls complaining to the landlord of police attendances due to the ongoing dispute. The landlord testified they have spoken to the neighbouring occupant as well as to the police. The landlord testified that the applicant tenant has made the neighbouring occupant uncomfortable with intrusive behaviour, including looking into the neighbouring occupant's open windows. As well the landlord's information is that there have been disputatious verbal exchanges between the 2 tenants and exchanges of physical assault. The landlord testified that based on their information and on the recommendation of police they determined it was appropriate to give the tenant in this matter a Notice to End for Cause. The landlord did not elaborate on their evidence or on their reason to seek an end to the applicant's tenancy versus the neighbour's, or both. The tenant testified that they have attempted to communicate to the landlord their version of the facts vis a vis their dispute with their neighbour but to no avail. The tenant testified that police involvement has always been at the request of their neighbour and other occupants of the residential property. The tenant also testified that the conflict with their direct neighbour continues and that the last police involvement occurred immediately before this hearing and that it resulted from their neighbour again assaulting them.

Analysis

In this type of application, the burden of proof rests with the landlord to provide evidence

that the Notice was validly issued, for the stated reason, and that the reason(s) constitute *sufficient* cause.

In the absence of other admissible evidence in this matter I accept the limited testimony of the landlord and that of the tenant that there is a conflict between the tenant and their neighbour and that it also likely negatively impacts the greater residential tenant contingent. However, on preponderance of evidence in this matter I am not satisfied that the landlord has met their burden. I find that the landlord has not provided *sufficient* evidence that the Notice to End was for sufficient reason as stated in the notice to end and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. It must be stated this is not to be construed by the tenant as exoneration of any conduct or responsibility of their part in a dispute with their neighbour. The tenant has come perilously close to losing their tenancy. The landlord is at liberty to issue a new Notice to End for sufficient and valid reason(s) if they have proof to support it and for which the circumstances of the current Notice to End may form part of such subsequent Notice for cause.

As a result of all the above **I Order** the Notice to End dated August 21, 2017 set aside.

Conclusion

The landlord's application is dismissed and the tenant's application is granted. The landlord's Notice to End is set aside and the tenancy continues.

This Decision is final and binding.

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: November 20, 2017

Residential Tenancy Branch