



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BILL RIGBY MEMORIAL SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a One Month Notice to End the Tenancy for cause dated September 7, 2017 to be effective October 31, 2017 by posting it on the door. The tenant said they served the landlord with their Application for Dispute dated September 15, 2017 personally and the landlord agreed they got it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to section 47 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy and pursuant to section 30 of the Act to order the landlord to not unreasonably restrict access to the property for her guests.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The landlord described this as subsidized housing in a seniors' only building as described in the lease. The tenancy began a number of years ago but the most recent lease is dated August 8, 2013, rent is \$610 a month and there is no security deposit. The tenant's unit is described as a one bedroom unit of approximately 600 sq. ft. The landlord served the Notice to End Tenancy for cause for the following listed causes:

- a) The tenant has allowed an unreasonable number of occupants in the unit;
- b) The tenant or a person permitted on the property by them has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- c) There has been a material breach of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord described the problem as the continual unauthorized entry into the tenant's unit by son, A. He comes in very late at night and accesses his mother's unit through the sliding glass patio doors. In August, he was barred and warned more than once to no avail. He stops for a short time, then continues coming in and staying for a month or two at a time. His behaviour causes significant disturbance to other tenants and unreasonably interferes with their peaceful enjoyment. The landlord described how he got drunk frequently, then bangs on his mother's door or encroaches on other tenants. In 2015, he hit another tenant. She said there are 43

seniors in the building and they are frightened of him. The Police have been called on occasion but his behaviour persists. The landlord has tried to work with the tenant for over a year to resolve the problem but it continues.

The other son of the tenant spoke on her behalf at the hearing. He agrees his brother is on medication and shows up at his mother's door but says he does not live there. He said his mother lets A. in because she is on medication that makes her very sleepy late at night. She has bad health and has home care. He said his son-in-law met with management lately and obtained a 3 month extension to February 28, 2018 for his mother to stay in residence. Apparently she signed a Notice to End her tenancy on that date but he thought he should dispute this Notice to End Tenancy anyway to see if he could cancel it and achieve an even better result for his mother. He said they had received no evidence from the landlord and says they can't resolve his brother coming on the property so why doesn't the landlord get a restraining order or transfer his mother to another unit or building.

The landlord said she was told that the tenant was cancelling their Application to Dispute when they agreed to the 3 month extension so she did not forward their evidence. She said they have no vacancies for transfer. The tenant said there was one coming up and talked about dates. I advised them to do their negotiating on this outside the conference.

After discussing this matter with both parties, they agreed that there had been an extension of the tenancy until February 28, 2018. The landlord agreed they would receive an Order of Possession effective March 31, 2018 which could be enforced if necessary if the tenant does not vacate as promised.

Analysis:

The Notice to End a Residential Tenancy is based on cause. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes it and the tenant disputed it in time.

The onus is then on the landlord to prove they have good cause pursuant to section 47 to end the tenancy. Section 47 sets out a number of causes, any one of which, if proven, is cause to end the tenancy. I find the landlord satisfied the onus. I find the weight of the evidence is that the tenant is allowing her son, A., to enter the building and stay for long periods of time in her one bedroom apartment. This is a seniors' building and I find the tenant is violating her lease by doing this. In addition, I find this son, A., is significantly interfering with the peaceful enjoyment of other residents with his drunken behaviour and late intrusions into his mother's unit through her patio door.

I find the tenant's representative's complaints about not receiving evidence rather deceptive as his son-in-law negotiated a settlement with the landlord that the tenant would end her tenancy

on February 28, 2018 and they would cancel this hearing. I find the landlord acted in good faith on what was negotiated.

In respect to the tenant's request that the landlord not unreasonably restrict access to her guests, I find insufficient evidence that the landlord is restricting access to the tenant's guests. The landlord is restricting access to son A. and I find they have reasonable grounds to do so. I dismiss this request of the tenant.

I dismiss the application of the tenant in its entirety. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 47 and has upheld the Notice. I grant the landlord an Order for Possession effective March 31, 2018 which will be enforced if the tenant does not vacate on February 28, 2018 as negotiated.

Conclusion:

I dismiss the tenant's application; the filing fee was waived. I grant the landlord an Order for Possession effective March 31, 2018. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement

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 23, 2017

Residential Tenancy Branch