



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is the Tenant's Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause issue September 30, 2017 (the "Notice").

The parties gave affirmed testimony at the Hearing.

There were no issues identified with respect to service of documents.

Issue(s) to be Decided

Is the Notice a valid notice to end tenancy?

Background and Evidence

The Notice was hand delivered to the Tenant on September 30, 2017. The Notice provides the following reasons for ending the tenancy:

"Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

The Landlord's agent MS submitted that the Tenant lives in the basement suite of the rental property. There are other occupants who live in the upstairs suite. The furnace and blower fan is located in the basement suite and the thermostat controls are located in the upstairs suite.

The Landlord provided written submissions, which provide in part:

Regarding the lady who lives in the basement suite. We are concerned that she should not be living alone. We have numerous complaints from our tenants upstairs, and below I will reference a few of the grievances we hear from her, as well as complaints from our tenant. She does not seem mentally stable, and we fear for her safety and safety of others in the house.

1. When we initially gave her the keys to the suite, she insists she saw us also give a set to some "friends" across the street.
2. She complains that people are pounding on her door at 1 am and 3 am.
3. She believes that someone keeps coming into the suite. Coffee pot moved slightly different position, a shopping bag that she swears is not hers. Many items misplaced. Twice we put in new locks to appease her and help her. But the 3rd time, we told her that we wouldn't do it again.
4. She insists the furnace is too loud so she can't sleep at night, so she turns it off so that the heater won't work. And unfortunately then it freezes the tenants upstairs because she has total control of the furnace. And without the fan, the heater upstairs will not work.
5. When we had water problem and a professional company came in. We offered her to move into a hotel for a night or two, and we were going to pay for the hotel. She wouldn't leave. So a professional water damage company came in with their dryers to dry the flooring. She kept turning those off because she didn't like it.
6. She complains she is cold but she walks around in barefeet and her housecoat, insisting she has nice polished nails. We even brought her a pair of socks but she says she won't wear socks.
7. We also tried to give her a space heater to use if she is cold. But she won't use it, insisting she is scared of it (the tenants previously had 3 space heaters that worked beautifully and she had seen that).
8. She yells at the tenants constantly to turn the heat on. They do keep it on, but keep it down at night. They have been reasonable with the heat, as they themselves don't want to be cold. We also recommended sitting on the couch with a blanket to help keep warmer. She will not do that either.
9. She bangs on the ceiling yelling at tenants when it's too cold for her constantly.
10. We need to replace the carpets downstairs. We are concerned they are a health hazard. The carpet is looking filthy, black. But she will not leave her bedroom so we cannot take care of the carpet.
11. In the bathroom where we have a new floor put in before she arrived, there is already water damage. We see dripping, around the toilet, sink... the floor is not being maintained properly.
12. There's always food debris laying around on the table, and in the kitchen. Grease stains everywhere. We are worried about rat infestation issues.

MS testified that the water damage occurred, through no fault of the Tenant's, on September 22, 2017. The Tenant would not accept the Landlord's offer to stay in a hotel while the remediation was taking place. The Landlord hired a restoration company who installed industrial dryers in the rental unit. The Tenant kept turning the dryers off which caused additional moisture damage to the rental unit because it took a week to dry out rather than a couple of days.

MS testified that the Tenant has been repeatedly asked to stop turning off the furnace, but that she will not comply and then complains that she is too cold, but refuses to use the space heaters.

The Tenant's agent PZ is the Tenant's nephew. He stated that the furnace is too loud and disturbed the Tenant's sleep. Likewise, her sleep was disturbed by the industrial dryers, so she turned them off at night so she could sleep. PZ stated that the Tenant did not want to go to a hotel while her suite was dried out.

PZ testified that the Tenant is "elderly" and does not understand how to control the heat in the rental unit. He stated that the space heaters did not produce adequate heat. PZ stated that the Tenant had a "slight mental illness" but that she is now on medication.

PZ stated that he was trying to find alternate accommodation for the Tenant, but that he has not been successful. He stated that he has been advised that there is a 3 month waiting list for subsidized/assisted-living housing.

PZ suggested that the Landlord wants to get rid of the Tenant so he can renovate the rental property, which MS adamantly denied.

MS stated that the Landlord would like immediate possession of the rental unit, but would be satisfied with an Order of Possession effective December 31, 2017, in order to allow the Tenant more time to find alternate accommodation.

Analysis

When a tenant seeks to cancel a notice to end a tenancy, the onus is on the landlord to show that the tenancy should end for the reasons provided on the notice.

Based on the evidence of both parties, I find that the Landlord has provided sufficient evidence that the Tenant has significantly interfered with and unreasonably disturbed the upstairs occupants by repeatedly turning off the furnace and banging on the ceiling.

I find that the Notice is a valid notice and that the tenancy ended on October 31, 2017. Therefore, the Tenant's application is dismissed.

Conclusion

Further to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., December 31, 2017**. This Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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: December 06, 2017

Residential Tenancy Branch