



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, & FF

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for cause
- b. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant in File #866746 seeks an order to cancel the one month Notice to End Tenancy dated September 7, 2017

The Application for Dispute Resolution filed by the Tenant in File #864228 seeks a monetary order in the sum of \$3505.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached.

Preliminary Matter:

The tenant failed to prove she sufficiently served the landlord with the Application for Dispute Resolution in File #864228. She testified she sent it by registered mail to a Vancouver address. Those documents were returned. The landlord does not reside at that address. The tenant was not able to produce the registered mail receipt. The landlord testified they never received the Application for Dispute Resolution. The tenant testified that her documents indicate this matter was set for hearing on December 28, 2017. As search of the Residential Tenancy Branch registry indicates it was originally set for December 28, 2017 but was changed to December 4, 2017. I determined the tenant failed to prove service of the Application for Dispute Resolution on the landlord. As a result I dismissed the application in File #864228 with liberty to re-apply.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. All of the evidence was carefully considered.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on September 7, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenant was served on the landlord on September 19, 2017. I find that the Application for Dispute Resolution filed by the landlord was sufficiently served on the Tenant.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated September 7, 2017?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on June 13, 2017. The rent is \$1225 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$600 at the start of the tenancy.

The tenant(s) has not paid the rent for the months of November and December 2017. The tenant testified she thought she was entitled to one month rent free after being given a Notice to End Tenancy. Further, she had found alternative accommodation to move to for December 1, 2017 but she was scammed and was not able to move out.

The Notice to End Tenancy is sets out the following grounds to end the tenancy::

- 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
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 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
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 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Analysis:

The landlord testified that the tenant has harassed and threatened another tenant in the rental property and has put the property at significant risk.

Witness #1 for the landlord gave the following evidence:

- She has lived in the rental unit for 15 years.
- The downstairs tenant and guest have threatened to kill us.
- I fear for my safety.
- As a result of the threats and harassment I have spent half of time in October and November living elsewhere.
- Witness #1 also presented a written summary of events that included:
 - On July 29, 2017 the tenant was very noisy after 11 p.m. and was heard swearing, knocking the door and yelling “go away f___ Russians.”
 - On Saturday, August 19, 2017 the tenant and her guest were extremely loud yelling at each other between 10:00 p.m. and 1:00 a.m.
 - On Saturday, August 26, 2017 the tenant and her guest got into a yelling match yelling at each other between 8:00 p.m. and 1:00 a.m.
 - On Sunday, August 27, 2017 the tenant’s guest yelled at her calling her “stupid idiot” She avoided walking through the garage for safety reasons.
 - On Friday September 1, 2017 and Saturday, September 2, 2017 and tenant and her guest were extremely noisy during the night time yelling at each other and slamming doors.
 - On Tuesday, September 5, 2017 the tenant blocked her access to the laundry area and started harassing and intimidating her by yelling and calling her names.
 - On September 6, 2017 the police were called because of the yelling and screaming from downstairs.
 - The summary continues to describe misconduct of the tenant and her guest in September and October. This evidence cannot be considered in determining the validity of a Notice to End Tenancy dated September 7, 2017.

The tenant gave the following evidence:

- She testified that Witness #1 is lying
- Witness #1 is misrepresenting the truth when she is away more than half of the time. She often goes away on weekends.
- She does not smoke and does not take drugs. Her guest never smokes in the rental property and goes outside when he smokes.

- Her belongings in the shed are not rubbish.
- Witness #1 (the upstairs tenant) is constantly making noise by stomping on the floor and provoking us.
- The rental property has a mice problem.
- Her guest was taken away by the police on one occasion for intoxication but he was never charged.
- Other tenants have not complained.
- Her guest has played soccer with children from another rental unit in the four-plex.
- The also provided a written summary that included the following:
 - The landlord agreed her guest could stay on a temporary basis.
 - The tenant and her guests have not disturbed the landlord or any other occupant.
 - Witness #1 is not telling the truth
 - Witness #1 disturbs her by stomping etc.
 - There is a problem with mold in the rental property.

Analysis:

After carefully considering all of the evidence I determined the tenant and/or her guest has significantly interfered with and unreasonably disturbed another occupant or the landlord. As a result I determined the landlord has sufficient cause to end the tenancy.

I prefer the evidence of Witness #1 to that of the Tenant. Her written summary was more detailed and is more consistent with the surrounding evidence. The tenant acknowledged that on one occasion her guest was taken away by the police for intoxication. I accept the testimony of Witness #1 and on many occasions primarily on the weekend the tenant and her guest have engaged in noisy arguments that has significantly interfered with and unreasonably disturbed her and her family. I also accept her testimony that the tenant and her guest has harassed, threatened and intimidated Witness #1 to such an extent that she fears for her safety and has often left the rental unit to avoid these disturbances.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on 7 days notice. .

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Landlord's Application - Order of Possession:

For the reasons set out above I granted an Order of Possession. I further ordered that the Tenant pay to the landlord the sum of \$100 for the cost of the filing fee such sum may be deducted from the security deposit.

This decision is final and binding on the parties.

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