



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAYMOND MOSS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on December 13, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on November 1, 2016 as a month to month tenancy. The rent is \$829.00 of which the Tenant’s portion is \$472.00 and the balance of \$357.00 is a rent subsidy. Rent is due on the first day of each month. The Tenant paid a security deposit of \$405.00 at the start of the tenancy.

The Landlord said they served the Tenant with a 1 Month Notice to End Tenancy for Cause dated November 29, 2017 on November 30, 2017 by registered mail. The Effective Vacancy Date on the Notice is January 31, 2018. The Tenant is living in the unit and the Landlord said they want to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of other occupants and significantly interfered with or unreasonably disturbing another tenant or the landlord.

The Landlord said there have been a number of incidents with the Tenant partying with her guests and smoking and drinking in common areas. The Landlord said the tenancy

agreement and the complex rules do not allow smoking and/or drinking in common areas. The Landlord further said he has included complaint letters from other tenants and warning letters to the Tenant to correct her behaviour as this is a family rental complex. The Landlord continued to present his evidence as follows:

- 1). The Landlord said clause 24 of the Tenancy Agreement (Conduct) says a tenant can not disturb other tenants in particular between the hours of 10 p.m. and 9:00 a.m. As well clause 37 of the rules of the rental complex says that no tenant can smoke or consume alcohol in the common areas as per municipal bylaws. The Landlord said the Tenant has breached both these clauses which resulted in the 1 Month Notice to End Tenancy for Cause.
- 2). The Landlord said he submitted 6 written complaint letters 4 from one tenant A.C. and two from tenant K.C. The complaint letters from A.C. express concern over the Tenant smoking and partying on every week end at the start of the Tenant's tenancy and then every other weekend later in the tenancy. Witness A.C gave affirmed testimony that the Tenant was partying less after an earlier warning from management and since September, 2017 the unit has been quieter. The Witness A.C. wrote and said the Tenant's partying had continued up to 11:30 many nights and this disturbed her and her daughter's sleep. As well the Witness A.C. said she believed a man was living in the Tenant's unit and he was involved in the partying. The Witness A.C. said she and her daughter were very uncomfortable with the man's presents in the rental complex. .
- 3). The second witness K.C. wrote and gave affirmed testimony that the Tenant had many parties to late in the night and on August 25, 2017 the Tenant's party continue into the night to 3:00 a.m. Further the Witness K.C. wrote and testified that the Tenant was partying on night November 25, 2017 and the Tenants guests interfered with an ambulance he had called for his son at approximately 1:00 a.m. The witness K.C. said 911 told him the ambulance attendances were scared to come into the building because of a crowd of people partying, smoking and drinking. The witness said he had to take his son down to the street to meet the ambulance.
- 4). The Landlord said they followed up these complaints with warning letters and discussions with the Tenant. The Landlord said the Tenant's behaviour has not changed appreciably. The Landlord submitted copies of warning letters dated November 15, 2016, January 10, 2017 and August 31, 2017. All the warning letters are about the Tenant breaching the tenancy agreement for smoking, noise and behaviour and extra occupancies. Consequently the Landlord said they want to end the tenancy which is the reason they issued a 1 Month Notice to End Tenancy for Cause

The Tenant said the Landlord's claims and the witness's testimony are untrue and she made the following statements regarding each of the points the Landlord made:

1). The Tenant said she did have parties and there was smoking at the start of her tenancy. The Tenant continued to say when she understood the rules she told her guests that they had to stop any parties by 11:00 to 11:30 p.m. The Tenant said there has been no smoking on the rental complex common grounds and the Tenant and her guests left her unit on weekends by 11:30 p.m. The Tenant said she believes she is following the rental complex rules.

2). With regard to a man living in her unit the Tenant said her sons father comes to visit and he is a guest often but he does not live there. The Tenant's Witness D.M. gave affirmed testimony that he visited his son often but he does not live at the Tenant's rental unit and he does not host any parties.

3). The Tenant continued to say the night the ambulance came she was told the ambulance could not see the address so they phoned the witness K.C. to meet them at the front door of the rental complex. The Tenant said her guests did not impede the ambulance attendances in any way.

The Landlord responded to the Tenant's testimony that the correspondence the ambulance service sent to the Tenant and she sent is as evidence says that the ambulance attendances said they were interfered with by a large group of rowdy people which the ambulance attendances did not feel comfortable getting out around.

The Tenant said in closing that she has had trouble with the other tenants in the building from the start of her tenancy. The Tenant said the ambulance issue has nothing to do with her guests it was because of poor signage. As well the Tenant said she thinks she has complied with the rules as she controls her guests and her parties end between 11:00 and 11:30 p.m.

The Landlord said in closing there have been many incidents and the Tenant has not changed her behaviour appreciably. The Tenant has unreasonably disturbed at least the tenants the witnesses and witness K.C.'s sons health was put at risk when the Tenant's guests interfered with the ambulance attendances. The Landlord requested to end the tenancy based on the 1 Month Notice to End Tenancy for Cause.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord and some of the other tenants. Consequently the parties will abide by the following decision. I have reviewed the evidence that was submitted by the parties and I made notes regarding the testimony given at the hearing. In Section 47 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or

interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant.

In this case it is my finding that the Tenant is responsible for her guests and the reasons given for ending the tenancy have reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. The Tenant's own evidence from the ambulance attendances says they were interfered with by the Tenant's guests. In this situation witness K.C.'s son did not have a detrimental outcome as a result of the delay of the ambulance but it did put K.C.'s son at a **serious** health risk. Further by the Tenant's own testimony and the testimony of the witnesses A.C. and K.C. the Tenant's parties continued to between 11:00 and 11:30 on many occasions. The tenancy agreement in clause 24 Conduct states no loud noises particularly between 10:00 p.m. and 9:00 a.m. I accept the testimony of the Tenant and witnesses that the Tenant's parties continued to past 11:00 p.m. on many occasions which is a breach of the tenancy agreement. I find that the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated November 29, 2017. The Tenant application is dismissed without leave to reapply. Pursuant to section 55 of the Act the Landlord is awarded an Order of Possession with an effect date of January 31, 2018 as indicated on the 1 Month Notice to End Tenancy for Cause dated November 29, 2017

Conclusion

The Tenant's application is dismissed without leave to reapply.

An Order of Possession effective at 1:00 p.m. on January 31, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession 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: January 24, 2018

Residential Tenancy Branch