



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SMALLWOOD PACIFIC PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated January 8, 2018 to be effective February 28, 2018 and the landlord said it was posted in the tenant's mail slot. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated January 9, 2018 by registered mail and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The evidence of the lease in file is that the tenancy commenced August 27, 2004 under another landlord, rent is currently \$922 a month and a security deposit of \$335 was paid on August 27, 2004. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the property by them has;
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - (ii) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord described several incidents of the tenant calling them, rather than the manager, to deal with problems and often calling very late at night. For example they cited 23 non-emergency calls to the landlord's cell phone (which is noted for emergency use only on the on-site manager's door) between October and December 2017. The landlord also noted the tenant interrupts his business meetings by attempting to join in the conversations. The tenant said she usually can not find the on site manager so she calls the landlord.

Most importantly, the landlord recounted a serious incident that occurred on January 6, 2018. He said he and his son were working in a nearby unit when two guests of the tenant walked into that unit and began threatening them. His adult son was put in a choke hold and pushed to the floor resulting in injury to his wrist. They called the Police and a police report is in file. He said they chose not to press charges.

The landlord described the background to the dispute. He said the tenant was not paying for parking and she had a spot in the underground lot where the tenants pay \$25. In 2017, he discussed this with the tenant after his financing consultants pointed out some problems with the leases. She agreed to pay \$5 a month for parking and paid it all year. In January 2018, she was told the parking cost would be \$10 a month now. The tenant then said she did not have to pay for parking at all. Her guests entered the suite he was renovating to aggressively dispute the parking charges. A lease is in evidence which shows that parking is not included in the monthly rent. The tenant said no one charged for parking in those days but she has no subsequent lease in evidence.

The tenant's relative who is a witness was one of the two people who went to dispute the parking charge on January 6, 2018. He said he entered the open door of the suite the landlord was renovating and the landlord threatened him with a trowel. Then the landlord's son came from another room and tackled his buddy. He said the landlord lied to the police. The female landlord said she resented the remarks made by this witness about her son who has a degree in engineering. The landlord said he has been a landlord with some of the same tenants for 32 years; he is not a bully or vindictive. When I put it to them that the police report in evidence seemed to support the landlord's recount of the incident, the witness said they don't always get it right.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached. I have considered all the evidence although only evidence relevant to the decision is noted.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. Section 47 lists causes for ending a tenancy; any one of those causes if proven on a balance of probabilities is good cause to end the tenancy.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that the tenant or a person permitted on the property by her has significantly interfered with or unreasonably disturbed another occupant or the landlord. In this case, I find two of the tenant's guests entered a suite in January 2018 which the landlord was renovating and engaged in aggressive, violent behaviour. I find the Police Report dated January 6, 2018 supports the landlord's credibility as the police noted a cellphone video showed the tenant's guests being verbally aggressive with the landlord and his son although the phone then fell to the floor so the assault was not captured. In the police opinion, the tenant's guests were the main aggressors in the incident. I find this behaviour also seriously jeopardized the health or safety of the landlord.

After discussion, the parties agreed to an effective date for the Order of Possession of April 30, 2018.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on February 28, 2018 pursuant to the Notice to End Tenancy. An Order of Possession is issued to the landlord effective April 30, 2018 as agreed.

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: March 08, 2018

Residential Tenancy Branch