



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on May 23, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the "Notice")

The Landlord and the Tenant both attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties acknowledged receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agree that the Landlord served the Tenant, in person, on March 2, 2018, with the Notice. The Notice indicates the following reasons for ending the tenancy on the second page:

1. Tenant has allowed an unreasonable number of occupants in the unit/site.
2. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
3. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
4. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the first ground identified by the Landlord, as this ground is what my decision hinges upon.

The Landlord testified that when he rented the house to the Tenant he told her that she was only to have two people staying there, in part, because the septic system is not set up to handle more than that. The Landlord stated that the Tenant had way too many people living with her at the time he issued the Notice.

The Landlord stated that the neighbours have all complained about the multitude of people coming and going at all times, and have also reported that many items from their properties have gone missing since the Tenant moved into the property. The Tenant denied any such activity, and stated she has no knowledge of anything being stolen.

The Landlord stated that when he rented the house to the Tenant, it consisted of 3 bedrooms, plus a garage. The Tenant stated that she built an extra bedroom in the basement by adding a wall. The Landlord stated that he never approved her doing this and does not want this many bedrooms there or people living on site. The Tenant was under the understanding that she could make improvements to the property as she saw fit. The Tenant stated that she currently has 4 people living in the main house which consists of 4 bedrooms (her son, herself, and two other adults). The Tenant also stated that she rented out the garage to a friend, who still lives in there (although not for much longer). The Landlord stated that this garage is not habitable space, and the municipality does not allow or condone it as liveable space. The Landlord stated that he made this clear to the Tenant that it was for storage only.

The Tenant stated that from around October 2017 until April 2018, she also had two other adults living with her in the house. The Tenant also stated that a few of the adults living with her also have partners who spend a good deal of time at the property. The Tenant also stated that she is generous with her property and allows people who are less fortunate, and often struggling with addiction, to stay temporarily.

The Landlord stated that he has seen first-hand how overpopulated the property is. The Landlord also provided a letter from a person who accompanied him on the latest visit, named R.C., who stated that “there were people camping all around the yard. There were tents and small shanty type buildings with people in and around them. There was an outhouse to accommodate the over-population that was living there.”

There was also another letter written by a Cowichan Valley mental health housing manager which stated that he accompanied the Landlord for a site-visit a couple of months ago and stated: “I found people living in tents and homemade plywood huts in many places. There was a steady stream of people driving on and off the property, staying for a few minutes then leaving.” This individual also noted that he felt very unsafe while he was there.

The Tenant also stated that she has fixed up the house, and the property and she wants to stay because she has made this her home. The Tenant does not feel the number of people she has staying with her is unreasonable.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord entered into written evidence a copy of the Notice. The first issue the Landlord identified on this Notice was:

Tenant has allowed an unreasonable number of occupants in the unit/site

I note that when the Tenant rented the house, it was a 3 bedroom house, and she chose to add an extra bedroom in the basement so that she could have extra roommates. I note the Landlord stated he made it clear that he only wanted 2 people

living there when the tenancy began because the septic system is limited. The Landlord also told the Tenant that the garage is for storage only as it is not habitable space. The Tenant acknowledged that the garage has an illegal half built suite that is not approved by the municipality.

I have considered the totality of the situation, and I find the Tenant has allowed an unreasonable number of occupants to live on the property. The evidence shows that the Tenant initially rented a 3 bedroom house, and added an extra room without proper authorization in the basement. Over the winter, the Tenant admitted to having herself, her son, and two other adults (and sometimes their partners) live in the house. Additionally, the Tenant stated that she had another two adults living with her from around October 2017 until April 2018 (one of whom has now passed away). Furthermore, the Tenant stated that she also rented out the garage to an adult, who continues to live there, despite it not being proper habitable space.

I also find the Landlord has provided compelling evidence from witnesses with respect to the number of people living outside the house in tents and temporary housing. I note that when the Landlord and his witnesses visited the property over the last couple of months, they noted that there were several people living in temporary shelter type housing in the yard (plywood shelters, tents).

Overall, I find there is sufficient evidence to show that the Tenant has an unreasonable number of occupants on the property both inside and outside. As such, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. Although the Notice issued by the Landlord is from 2011, I find it is substantially similar to the new form, and meets the form and content requirements under the *Act*.

In summary, I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. I find the Landlord is entitled to an order of possession effective **May 31, 2018**, after service on the Tenant.

Since the Tenant was not successful with her application, I decline to award the recovery of the filing fee.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **May 31, 2018**, after service on the Tenant. This order must be served on the tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: May 24, 2018

Residential Tenancy Branch