



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP RP LRE MNDCT PSF RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order that the landlord make repairs to the rental unit or property;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- an order reducing rent for repairs, services or facilities agreed upon but not provided.

One of the tenants named in the application is a Health Clinic, and the other is an individual.

The individual tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

The landlord has provided a copy of a Decision of the director, Residential Tenancy Branch dated August 29, 2018 following a hearing on August 24, 2018. The Decision states that the tenant's applications for a monetary order, and for emergency repairs, and for an order that the landlord provide services or facilities, and for a rent reduction were

heard and dismissed. It is not for me to re-hear those applications, and not proper for a party to re-apply for relief that has already been dealt with. Therefore, I dismiss those applications.

The Decision also states that the tenant was successful in her application for an order that the landlord comply with the *Act* or the tenancy agreement, and the landlord was ordered to comply with Section 29 of the *Residential Tenancy Act* with respect to entering the rental unit. Since that matter has been dealt with, I dismiss the tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 1, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$1,025.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$512.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the upper unit is also tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing which names the individual tenant and the Health Clinic.

The landlord further testified that the landlord's partner served a One Month Notice to End Tenancy for Cause to the tenant on August 27, 2018 by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated August 26, 2018 and contains an effective date of vacancy of September 30, 2018. The reasons for issuing it state:

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

- put the landlord's property at significant risk.

When the tenant first moved in, she asked the tenants in the upper unit if she could get onto their Wi-Fi and to use the laundry and they said, "No." She kept harassing them about that.

Since about mid-April, the landlord has received dozens of emails from the tenant that make little sense, and dozens of phone calls. The parties had meetings in person in the first 3 or 4 months, but the tenant dominates conversations and it's difficult to have a meaningful conversation, taking up too much of the landlord's time. On June 17, 2018 the landlord sent a letter to the tenant asking that she be short and to the point.

The tenancy agreement prohibits smoking inside the rental unit, and the tenants in the upper unit have complained about the tenant smoking outside and under a window. The June 17, 2018 letter to the tenant asks that the tenant not smoke within 20 feet of the house. The tenant continued to smoke under the window, and the landlord testified that due to the bad fire year in the area, smoking outside has put the landlord's property at significant risk.

The tenants in the upper unit chose to end their tenancy, and the landlord received an email from them on July 31, 2018. The landlord told them it had to be in writing but not by email, and they provided a written notice to the landlord, and a copy has been provided for this hearing. It states that their intended move is due to circumstances beyond their control, and states that they have felt harassed by the tenant, found it frustrating to complete yard work or enjoy the yard for bantering on and arguing over meaningless and irrelevant issues. It also states that despite many conversations, the tenant continues to smoke under their baby's window. On August 17, 2018 the landlord received another email stating that they had changed their minds about moving out; they couldn't find a place in Victoria at a price they could afford and their tenancy continued.

The landlord has also provided other letters from the tenant to the landlord complaining about the tenants in the upper unit spying on the tenant and harassing the tenant, and to the MLA's office. All of the tenant's claims turned out to be false, including the claim of repairs required which was dismissed in the August 24, 2018 Arbitration. Also provided are letters to the landlord from the tenants in the upper unit and a plumber. The landlord had hired a plumber due to a complaint from the tenant about a musty smell, but the tenant contacted the plumber without the landlord's knowledge and continued to contact the plumber resulting in a \$110.00 bill that the landlord had to pay because the tenant "talked his head off." The landlord has received emails and phone calls from the landlord's partner, the plumber and tenants in the upper unit complaining about the tenant.

The landlord has also provided copies of 2 letters that the tenant gave to the tenants in the upper unit. The first is a 2-page letter dated August 29, 2018 containing accusations of lying and fraud. The second is a 5- page undated letter referencing “Complaints Made Referencing Sept 6, 2018 – upstairs disturbance.” The tenants in the upper unit called the landlord the day after receiving them.

The landlord’s witness is a tenant in the upper level of the rental home and testified that the tenant has been extremely challenging, tiring and relentless to talk to. The witness feels harassed, annoyed and finds the tenant disrupting and exhausting. The witness tries to be kind and understanding but is never able to get anywhere; the tenant goes on and on and is repetitive. The witness keeps the window shut to avoid dealing with the tenant.

The tenant talked to the witness about Wi-Fi about 4 times from April to August, 2018, and gave the witness an access card, but the witness didn’t use it. The tenant did not ask to use the laundry facilities.

The witness also testified that the tenant has approached her multiple times to talk about smoking, about mail, about bamboo and yard work which turned into a 7 minute argument. The tenant told the witness that smoking outside was permissible, but the tenant continued to smoke outside the baby’s window. There have been multiple encounters.

The witness and spouse had given notice to end the tenancy because they were not happy living in the City, but found no rentals in Victoria. Three prospective rentals fell through, and they remained in the rental unit.

The tenant testified that she suffers from a brain injury and other handicaps, and finds it difficult to express herself and remain focused.

There has not been a significant harassment to the tenants in the upper unit or the landlord. The landlord ought to have told the tenants in the upper unit that the tenant is permitted to smoke outside. The tenant in the upper unit yelled at the tenant and told the tenant to shut up.

The landlord told the tenant smoking was permitted 10 feet from the house and then 20 feet. The tenant also called the Residential Tenancy Branch. The tenant told the landlord that according to the City By-Law and the Residential Tenancy Branch, it’s not illegal.

The tenant has also provided numerous notes, very lengthy emails and letters, most of which refer to the claim for repairs. They also indicate that the landlord had told the tenant that the tenancy was not working out for him.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

Firstly, I am not satisfied that smoking cigarettes outside, even during fire season, has put the landlord's property at significant risk. In order to end a tenancy for that reason, the landlord must be able to demonstrate that the tenant is somehow negligent in such a way that there is a significant likelihood of a risk. There is no evidence of that.

There is no dispute that the tenant suffers from a brain injury that affects the tenant's ability to communicate or remain focused. However, I must also consider the landlord's obligation to provide the tenants in the upper unit with their right to quiet enjoyment, free from unreasonable disturbances. The witness, who is the tenant in the upper level, has used very descriptive words in the testimony of multiple encounters with the tenant. Because the letters given to the tenants in the upper unit by the tenant were given after the issuance of the One Month Notice to End Tenancy for Cause, they cannot be considered a reason to have given notice to end the tenancy. However, I find them to be indicative of a pattern of events. I have reviewed all of the evidentiary material provided by the parties, and I am satisfied that the landlord has established that the tenant has significantly interfered with or unreasonably disturbed another occupant. The tenant's application to cancel the One Month Notice to End Tenancy for Cause is dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the tenancy is ending, I dismiss the tenants' application for an order that the landlord make repairs to the rental unit or property.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: October 18, 2018

Residential Tenancy Branch