



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WELBEC QUESNEL LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The Tenant and a legal advocate for the Tenant (the “Tenant”) were present for the teleconference hearing as were two agents for the Landlord (the “Landlord”). The Landlord also had two witnesses who joined during the hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenant along with a copy of the Tenant’s evidence. The Landlord did not submit any documentary evidence prior to the hearing to either the Residential Tenancy Branch or the Tenant.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on April 1, 2017. A security deposit of approximately \$300.00 was paid at the outset of the tenancy. Monthly rent was initially \$600.00 and is currently \$650.00. The Shelter Information form was submitted into evidence to confirm the details of the tenancy as stated by the parties.

The Landlord provided testimony that on October 26, 2018 they served the Tenant in person with a One Month Notice. The One Month Notice, dated October 25, 2018, was submitted into evidence and states the following as the reasons for ending 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
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk
- 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
 - Jeopardize a lawful right or interest of another occupant or the landlord

Further details were provided on the One Month Notice as follows:

The tenant has had the RCMP at the apartment on several occasions in which we have received two letters saying if they have to come again as this is a problem with repeated service calls we will be fined \$1000.00. They have repeatedly disturbed other tenants by yelling screaming and fighting all day and night. The lady he is fighting with is not a tenant he allows her to stay on his couch which is not permitted. Tenant is to be moved by noon on November 30/2018.

(Reproduced as written)

The Landlord provided further testimony that they hear constant yelling and shouting from inside the Tenant's rental unit. They stated that they received a letter from the RCMP that they would receive a fine of \$1,000.00 should they continue getting called to the rental unit.

The Landlord stated that the Tenant has had a female living with him who is causing constant disturbances in the building. The Landlord stated that they visited the Tenant in April 2018 to find out what was going on and found the female on the couch and the Tenant drunk. They visited again in May 2018 and June 2018 and the constant yelling and fighting has continued since then.

The Landlord stated that they received a second letter from the RCMP in September 2018, but the address of the rental unit had been recorded incorrectly. The Landlord also spoke about events that have occurred since the issuance of the One Month Notice that had led them to have concern.

The Landlord stated that the RCMP cannot keep coming to the rental unit and the Tenant needs to move out as other residents in the building have a right to quiet enjoyment.

The Tenant submitted that there was one letter from the RCMP, which they submitted into evidence. The letter, dated June 22, 2018 states that there may be a bylaw fine to the property owner should there found to be too many nuisance calls for service to the property.

The Tenant stated that he did let his ex-partner stay at the rental unit on a number of occasions and that verbal arguments occurred during some of these visits. The Tenant further stated that the Landlord cannot stop the Tenant from having guests in the home and that their claim that the Tenant is yelling all day and night is greatly exaggerated.

The Tenant stated that he regrets letting his ex-partner stay and that he was the person who called the RCMP many times to have the female removed from his rental unit. He stated that he called when arguments were happening as he did not want the disputes to escalate. He has applied through Freedom of Information for copies of the calls to the RCMP and the reports but has not yet received the information.

The Landlord stated that the Tenant drinks alcohol which leads to anger and other issues that cause disturbance to others in the rental building. They stated that yelling and screaming can be heard from the Tenant's rental unit even when he is on his own.

A witness for the Landlord, W.R., stated that the Tenant has a long history of yelling and RCMP involvement for domestic disputes. He stated that he saw the Tenant's female visitor at the rental building approximately three weeks ago and the Tenant was asking her to leave. The witness stated that he resides in a neighbouring rental building on the property but is in the Tenant's rental building often.

The Tenant testified that his ex-partner is no longer staying at his rental unit and left approximately one week prior to receiving the One Month Notice. He stated that he does not currently have contact with this person, other than when she came by once to collect some belongings.

The Landlord questioned why the Tenant's ex-partner was collecting belongings if she didn't live in the rental unit with the Tenant. They also stated that the ex-partner has been drunk when seen in the building.

The Tenant stated that the female guest had kept some items at his home but was not a roommate and instead would stay on the couch on occasion.

A second witness for the Landlord, E.P., provided testimony that she lives in the rental building and also works as a cleaner in the building. She stated that she can hear a lot of yelling and swearing from the Tenant's rental unit which can often be heard over the sound of the vacuum. She stated that she has heard the Tenant yelling and swearing at his female guest and then the Tenant would throw her out by shoving her out the door. She stated that the female guest would come back often. She also stated that she had seen the Tenant drunk many times and that there are issues occurring with the Tenant every week.

The Tenant submitted further evidentiary material which included a written statement outlining events that have occurred, and a written statement from the Tenant's legal advocate.

Analysis

The parties were in agreement that the Tenant was served with a One Month Notice on October 26, 2018. Section 47(4) of the *Act* states that a tenant has 10 days in which to

dispute a One Month Notice. As the Tenant applied for Dispute Resolution on November 2, 2018 I find that he applied within the timeframe provided under the *Act*. Therefore, the issue before me is to determine whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities that the reasons for the notice are valid.

The Landlord provided six grounds for ending the tenancy under Section 47 of the *Act*. The first reason, that the Tenant has an unreasonable number of occupants was provided under Section 47(1)(c). While it seems that the parties agreed that the Tenant had his ex-partner stay at his rental unit, they were not in agreement as to what this meant. The Tenant said she stayed on occasion and no longer does so, while the Landlord stated that she was residing there as a roommate despite not being allowed to and continues to attend the rental building.

Regardless of how often the Tenant's guest was staying at the rental unit or the purpose of her stay, the One Month Notice states that the Tenant has an *unreasonable* number of occupants in the unit. However, I do not find sufficient evidence from the Landlord to establish that the Tenant is only allowed one occupant in his rental unit and that having his ex-partner stay there meant that there was an unreasonable number of occupants in the rental unit. As such, I cannot determine that this was a valid ground to end the tenancy.

The One Month Notice also states that the Tenant or a guest have significantly interfered with or unreasonably disturbed another occupant or the landlord, jeopardized the health or safety of other occupants or the landlord, and put the landlord's property at significant risk pursuant to Section 47(1)(d) of the *Act*.

I do not find sufficient evidence before me to establish that the landlord's property is at risk and neither party presented any testimony regarding risk to the property. As such, I find that I cannot determine that this ground for ending the tenancy is valid.

As for the disturbance or interference with others, it does seem that the Tenant has engaged in confrontations with his ex-partner on the property that have led to police involvement. The Tenant provided testimony that this has occurred, and the Landlord's witnesses stated that they have heard yelling from the Tenant's rental unit.

However, the parties did not seem to agree as to the disturbance that this has caused to other occupants or the Landlord. The Landlord stated that the yelling is constant, while the Tenant stated that arguments have occurred on occasion, but the issue was resolved prior to the One Month Notice being served.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit evidence over and above their testimony to establish their claim. While the Landlord and two witnesses for the Landlord testified as to arguments heard between the Tenant and his guest, which the Tenant agreed have occurred in the past, I do not have sufficient evidence to establish that this is causing *significant* or *unreasonable* disturbance or interference to others.

Yelling or arguing in the rental unit or drinking alcohol in the rental unit does not necessarily mean that others are seriously disturbed. Based on the testimony and evidence presented, I am not able to establish how often this occurred or the level to which others have been impacted. Therefore, I am not satisfied that this was a valid ground for ending the tenancy.

The final grounds for ending the tenancy with a One Month Notice were due to illegal activity by the Tenant or a guest of the Tenant, pursuant to Section 47(1)(e) of the *Act*. While the Landlord testified as to events that occurred since the One Month Notice that may have been illegal in nature, I do not find this relevant to considering the validity of the One Month Notice that was served prior to these events.

The Landlord and the Tenant both spoke about police presence at the rental unit and the letter from the RCMP confirms that they have received calls relating to the Tenant's unit. However, the letter from the RCMP does not confirm that any illegal activity was occurring. In the absence of any other documentary evidence or testimony from either party that would establish that the Tenant or a guest were engaging in illegal activity, I am not satisfied that this is a valid ground for ending the tenancy.

Based on the above analysis, I find that the Landlord did not meet the burden of proof to establish, on a balance of probabilities, that the reasons for the One Month Notice are valid. Therefore, the One Month Notice dated October 25, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The One Month Notice dated October 25, 2018 is cancelled and of no force or effect.
This tenancy continues until ended in accordance with the *Act*.

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 14, 2018

Residential Tenancy Branch