



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, LAT, LRE, OLC, RR

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a one month Notice to End Tenancy
- b. An order for a monetary order in the sum of \$15,270
- c. An order authorizing the change of locks to the rental unit
- d. An order suspending or setting conditions on the landlord's right to enter the rental unit
- e. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- f. An order that the rent be reduced for repairs, services or facilities agreed upon but not provided

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary Matter:

Rule 2.3 of the Rules of Procedure provides as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I determined the application of the Tenant to cancel the one month Notice to End Tenancy is unrelated to all the other claims in her application. Further it was apparent that it would not be possible to deal with all of the issues given the volume of evidence

that was uploaded. I ordered that this hearing would consider the Tenant's application to cancel the one month Notice to End Tenancy only. The remaining claims set out below are dismissed with leave to re-apply:

- b. An order for a monetary order in the sum of \$15,270
- c. An order authorizing the change of locks to the rental unit
- d. An order suspending or setting conditions on the landlord's right to enter the rental unit
- e. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
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I find that the one month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on October 5, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on October 24, 2014. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the one may Notice to End Tenancy?

Background and Evidence:

The tenancy began on November 22, 2015. The present rent is \$1067 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$495 at the start of the tenancy and a pet damage deposit of \$100 later in the tenancy.

Grounds for Termination:

Neither party provided a copy of the Notice to End Tenancy. However, the parties testified that the Notice to End Tenancy is in the approved form and relies on the following grounds:

- 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

- 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 or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord

The landlord seeks to end the tenancy based on the following:

- The building is a non smoking building and the landlord has received many complaints from other residents that the tenant is smoking. Further, she continues to smoke despite receiving many requests not to.
- The landlord has received many complaints of excessive noise including her dog is barking and is disturbing others.
- The tenant unreasonably disturbs the agent of the landlord but filming her with her cellphone on multiple occasions. .

The tenant disputes most of the evidence relied on by the landlord.

Evidence Relating to Smoking:

- The landlord produced a number of photos showing “no smoking” signs at various locations in the building.
- The landlord produced an e-mail from SW dated July 16, 2017 stating tenant was asked to stop smoking in her apartment and on her balcony. It states her dog barked for hours well pasted the quiet hour. The Tenant responded stating this is a false accusation.
- The landlord gave a warning letter to the tenant dated February 22, 2018 stating that it was brought to her attention that she was smoking in her apartment. The letter continues “Feel free to use your balcony to smoke as long as no tenant is bothered. If neighbourly tenants complain I will ask you to stop smoking on your balcony.”
- The landlord relies on a complaint from another tenant that the tenant smokes pot on her balcony. The landlord did not identify the name of the complainant to the tenant as that tenant did not want to be named. The tenant takes the position that she has the right to know who is complaining.
- The landlord gave the tenant a second complaint letter dated May 28, 2018 and requesting the tenant to not smoke in her apartment and balcony.
- The landlord relies on an e-mail complaint from CP dated June 17, 2018. The landlord followed this with a Notice dated June 18, 2018. The tenant responded

saying this person is not an occupant of the rental property. She is visiting from out of town for a short period of time. Further, she had evidence that she was not home at the time of the complaint and it could not be her.

- The landlord relies on a letter from V dated September 5 complaining about smoke coming from the tenant's unit. The tenant responded saying there have been many complaints against V. The tenant denies smoking in her room or on her balcony.
- The landlord relies on a communication dated October 1, 2018 from VN stating there has been a heavy amount of smoke from the tenant's suite. The landlord gave the tenant a Final Notice dated October 1, 2018. The tenant denies she was smoking and denies she was home for much of this time.
- The landlord relies on an e-mail dated October 4, 2018 to the Tenant referencing the complaint of VN and referring to the City of Vancouver Health Bylaw prohibiting smoking.
- The landlord relies on photos showing cannabis cigarettes on her patio table.
- The landlord relies on a letter dated October 2018 from a tenant who was not identified in the copy of the document given to the tenant stating he is aware this is a non-smoking building and that the smell of smoke is strongest from the vicinity around the tenant's unit.

Evidence about excessive noise:

- The landlord relies on a text from DM dated July 24, 2017 about the tenant's dog barking nonstop. The landlord followed this giving the tenant a Noise Complaint dated July 24, 2017. The tenant responded by asking for more proof.
- The landlord relies on a text dated October 15, 2017 from DM stating it is 8:30 p.m. and the tenant's dog is still barking. The tenant responded stating that her journal indicates that she resolved the problem when she came home at 11:09 p.m. She further stated that she talked to her neighbors above her who stated they were on the balcony that night and they did not hear anything.
- The landlord relies on an e-mail from CP dated June 17, 2018 stating that the tenant's dog was barking on and off from 1:00 a.m. to 5:00 a.m. The tenant responded by saying this is not an occupant in the building.
- The landlord relies on a communication from SM dated June 17, 2018 stating he was waken by a noise that sounded like someone fell onto the floor around 2:00 or 3 a.m. and some barking. The landlord gave the tenant a Notice dated June 18, 2018. The tenant denies she was home at the time.

- The landlord relies on a letter from V dated October 15, 2018 stating that the tenant approached her on October 13 and blamed her for the eviction. The tenant disputes the contents allegations raised by V in this letter.

Evidence relating to unreasonably disturbing by Tenant filming the Manager:

- The landlord relies on a letter dated May 9, 2018 from SW, the Manager requesting the tenant stop taking photos and filming her when she is in the garden. This was followed by an e-mail dated May 28 making a similar request. The tenant responded stating she has talked to her lawyer and she has a legal right to film outside her home and outside her patio. The tenant further responded that she responded because it appeared to her that the landlord was intending to confront her and she wanted evidence.
- There is a dispute between the parties over the condition and placement of a fence.

Analysis:

After carefully considering all of the evidence I determined the landlord has failed to present sufficient evidence to establish cause to end the tenancy for the following reasons:

- a. The landlord has the burden of proof to present sufficient evidence to establish cause to end the tenancy on a balance of probabilities. MT had very little first hand knowledge which would enable him to verify that the complaints were accurate. SW is the on-site manager. She had more knowledge but was not able to confirm the accuracy of many of the complaints.
- b. Neither party presented a copy of the tenancy agreement. I infer that the tenancy agreement is silent and does not state this is a “no smoking” building. However, in my view while a clause in the tenancy agreement would assist the landlord the absence of such a clause does not prevent the landlord from taking steps to end the tenancy if the landlord can prove that the smoking has “significantly interfered with or unreasonably disturbed another occupant or the landlord” as provided by the Act.
- c. There is a significant dispute on the evidence. The landlord relies on complaints from other Tenants. However, the other tenants did not attend the hearing and did not give viva voce evidence.

- In one case the complaint was from a guest coming from out of town. This guest is not an occupant in the building.
- Secondly, In other cases the landlord relies on complaints given by other tenants who requested to remain anonymous. Little weight can be given to this type of evidence as it effectively prevents the other party from defending themselves.
- Thirdly, it difficult to prove the accuracy of the statement in the e-mail or letter where there is a statement from a complainant and the Tenant denies that alleged event took place where the complaint does not give oral testimony at the hearing.
- Finally, even if the event took place it is impossible to determine based on the communications in this case whether the alleged smoking has “significantly interfered with or unreasonably disturbed another occupant.”

The tenant denies smoking in the rental unit or on the balcony. I determined the landlord failed to prove that the tenant has smoked in her apartment or on her balcony after receiving the Notice from the landlord on May 28, 2018. Further, even if the tenant has smoked the landlord failed to provide sufficient evidence to prove that it has significantly interfered with or unreasonably disturbed another occupant or the landlord.

- d. I accept the submission of the landlord that continuous barking from a dog can amount to a significant interference or unreasonable disturbance. However, I determined the landlord failed to present sufficient evidence to prove these allegations. The complainants failed to testify at the hearing. The tenant denies the allegations. In one case the tenant testified the people above her were on their balcony on the night in question and did not hear the dog barking. The landlord has the burden of proof to establish that the noises the complainants are hearing amount to a significant interference or unreasonable disturbance. The landlord failed to meet the burden of proof required.
- e. The landlord relies on evidence from the Manager that the tenant’s decision to video her on her cell phone on many occasions “significantly interfered with or unreasonably disturbed” the landlord. The tenant submits it is no illegal to video someone else but failed to provide the law relating this. I determined that even if it is not illegal to video someone else it may amount to a “significant interference or unreasonable disturbance” in a situation where the actions are significant and unreasonable. I determined on the facts of the case before me there is insufficient basis to end the tenancy on this ground. The tenant may have had a

misunderstanding of the legal affect of her actions. Further, there is insufficient evidence to determine whether the tenant's actions were unreasonable in the circumstances. .

Conclusion:

In conclusion I determined the landlord failed to present sufficient evidence to establish cause to end the tenancy. As a result I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the Act.

This decision is final and binding on the parties.

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 5, 2018

Residential Tenancy Branch