



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, submitted to the Residential Tenancy Branch on November 30, 2018 (the "Application"). The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause, dated November 21, 2018 (the "One Month Notice"), pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing on his own behalf. He was accompanied by K.D., an advocate, and N.E., a witness. The Landlord was represented at the hearing by S.H., an agent. S.H. was accompanied by C.A. and S.H., agents, and D.B., B.S., T.P., witnesses. All those giving oral testimony provided a solemn affirmation.

The Tenant testified the Application package was served on the Landlord in person by giving a copy to C.A. S.H. denied it was served in this manner but acknowledged receipt on behalf of the Landlord. In addition, S.H. testified the documentary evidence the Landlord wished to rely upon was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The Tenant rents a unit in subsidized housing operated by the Landlord. The parties confirm the tenancy began on December 1, 2017. Although the market rent for the unit is \$850.00 per month, the Tenant pays \$400.00 per month. The Tenant paid a security deposit of \$400.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice, which was served on the Tenant by leaving a copy attached to the door of the Tenant's rental unit on November 22, 2018. The Application acknowledges receipt on that date.

The One Month Notice was issued on the basis that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. A chronology of events was submitted into evidence by the Landlord. Specifically, the chronology refers to numerous instances when the Tenant's behaviour has resulted in complaints. Complaints related to "homeless" occupants in the rental unit; the volume of guest traffic; parties, yelling, and banging at all hours of the night; alleged drug use; use of laundry facilities by the Tenant's guests; intimidation of other tenants. The Landlord responded to the complaints with written warnings to the Tenant. Copies of the complaints and warning letters provided to the Tenant were submitted into evidence by the Landlord.

In addition, documents submitted by the Landlord confirm that the Landlord issued a notice to end tenancy for cause in late April 2018. However, the Tenant's behaviour improved for a time and the Landlord agreed to cancel the notice and continue the tenancy. At that time, the Tenant was provided with a letter that described the incidents of concern and advised that another notice to end tenancy for cause would be issued if the behaviour resumed. A copy of the letter was submitted into evidence by the Landlord.

According to S.H., the Landlord again started receiving complaints in November 2018. These related to the volume of guest traffic; guest use of laundry facilities; and police attendance at the Tenant's rental unit. Accordingly, the One Month Notice was issued.

In addition, current and former tenants provided testimony in support of the One Month Notice. D.B. testified that he lives in the unit above the Tenant and is regularly disturbed by noise from the Tenant's unit. T.P. testified she hears yelling and other noises from the Tenant's rental unit at all hours. She stated that her sleep has been disrupted and that she has been prescribed medication to address this issue. T.P. also testified she has requested to be moved to another floor, away from the Tenant. B.S. testified that she lived does the hall from the Tenant but moved out of the rental property due to the disruption caused by the Tenant and his guests.

In reply, the Tenant testified the claims are "bullshit". However, he acknowledged did at one time call out to gain access to visit him, but that this practice has stopped. With respect to the police attendance at his rental unit, he testified it was related to his efforts to protect a woman who was being assaulted.

N.E. is a pastor who provided testimony in support of the Tenant. He testified that the Tenant has a number of personal issues, but that he has not seen the behaviours complained of by the Landlord's agents and witnesses. N.E. also testified that the building is chaotic at any time and that noise cannot be attributed just to the Tenant.

K.D. also made submissions on the Tenant's behalf. He referred to evidence submitted in preparation for the previous dispute resolution hearing, referred to above. This evidence was not submitted for this hearing and has not been relied upon. In addition, K.D. stated that the Tenant has received "vicious" and harassing letters from other tenants, and suggested that the Landlord's description of the Tenant's guests is discriminatory.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the One Month Notice was issued on the basis that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

After careful consideration of the evidence and submissions of both parties, I find there is insufficient evidence before me to cancel the One Month Notice. The Landlord provided documentary evidence and oral testimony relating to numerous complaints of noise and other issues caused by the Tenant and his guests. I find that these incidents amount to significant and unreasonable disturbances. My findings in this regard are supported by the documentary evidence submitted by the Landlord which confirms the Tenant was provided with a number of warnings. In addition, witnesses for the Landlord provided testimony describing ongoing noise issues, and one former tenant testified that she moved out of the rental property due to the Tenant's behaviour.

The Tenant's primary response was to deny the allegations. K.D., the Tenant's advocate, pointed to the behaviours of other tenants and the Landlord's agents, rather than addressing the specific claims against the Tenant.

In light of my findings above, I find that the Tenant's Application is dismissed, without leave to reapply. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. I have examined the 10 Day Notice and find it complies with section 52 of the *Act*. Therefore, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants.

Conclusion

By operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: January 17, 2019

Residential Tenancy Branch