



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH ASSOC. SHUSWAP/
REVELSTOKE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The tenant was represented by his mother. The tenant's mother submitted that she has a legal representation agreement for her son. I suggested that it may be helpful to have the tenant participate in the hearing. The tenant's mother stated he was unavailable and would not be participating. However, I questioned whether the tenant's mother would be privy to the activity that the tenant was alleged to have been involved in. The tenant's mother assured me that there was probably nothing that she was unaware of or could not respond to. During the hearing, I noted that there were allegations concerning the tenant for times when the tenant's mother was not present. The landlord also expressed frustration that the tenant has chosen not to participate in not only this hearing but the previous hearing involving the parties. I was of the view the tenant was given the opportunity to appear for the hearing and this decision is being made without his testimony.

I confirmed that both parties had exchanged their respective hearing documents and evidence with each other. The documents submitted by both parties were admitted and considered in making this decision. However, with a view to brevity in writing this decision, I have only summarized or referred to the most relevant evidence.

The allotted hearing time was spent dealing with the 1 Month Notice to End Tenancy for Cause. I have not addressed the tenant's requests for orders for compliance. That remedy was severed from the application pursuant to the discretion afforded me under rule 2.3 of the rules of Procedure and dismissed with leave to reapply.

Issue(s) to be Decided

Should the 1 Month Notice to end Tenancy for Cause dated November 30, 2018 be upheld or cancelled?

Background and Evidence

The tenant has been occupying the rental unit since September 2015. The current tenancy agreement, including addendums, was signed by the tenant on August 7, 2018. The tenant is currently required to pay subsidized rent of \$412.00 on the first day of every month although the rent payment is sent directly to the landlord by the Ministry near the end of the preceding month. The landlord is an organization that provides subsidized independent living units to persons with mental health and/or addiction issues. The tenant suffers from schizophrenia. The tenancy agreement includes an Addendum entitled "Schedule 1" that provides for building rules including: prohibition of drug/alcohol use; smoking in the rental unit or common areas of the building; violent behaviour; loud noise and harassment of other occupants; among other things.

On October 25, 2018 a hearing was held to deal with a 1 Month Notice to End Tenancy for Cause previously issued to the tenant on August 31, 2018. The landlord had included a timeline of events that formed the basis for issuing the 1 Month Notice on August 31, 2018. Summarily, the majority of the complaints concerning the tenant's conduct involved smoking and vaping cigarettes and marijuana in the rental unit or on the balcony; creating loud noises; and, failing to attend meetings with the Interior Health Authority case worker. The tenant's representative filed to dispute the August 31, 2018 Notice. During the hearing, an agreement was reached between the landlord's agents and the tenant's representative. The Arbitrator recorded that the landlord withdrew the 1 Month Notice dated August 31, 2018 upon reaching the following agreement:

1. The tenant agreed to refrain from smoking inside the rental unit and in the common areas of the landlord's property.
2. The tenant agreed to engage with a case worker from the department of Interior Health on a regular basis.
3. The tenant agreed to follow the rules as laid out in Schedule 1 of the Residential Tenancy Agreement. The landlord will provide a copy to the tenant.
4. The tenant agreed to cooperate with the landlord with regard to the monthly inspections of the rental unit. The landlord will provide proper 24 hour notice in keeping with s.29 of the *Residential Tenancy Act*
5. The landlord agreed to inform the tenant's mother when the tenant has an "episode" as soon as the landlord becomes aware of the situation.
6. The landlord agreed to allow the tenancy to continue as per the above terms.
7. Both parties confirmed that they understood and agreed to the terms of this agreement.

The Arbitrator presiding over the October 25, 2018 hearing also wrote in the decision:

I find it timely to put the tenant on notice that, if he does not comply with the terms of this agreement and another notice to end tenancy is issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator for consideration.

On November 30, 2018 the landlord issued another 1 Month Notice to End Tenancy for Cause, the subject Notice of this proceeding and herein referred to as the 1 Month Notice. The 1 Month Notice was sent to the tenant in the mail. The 1 Month Notice has a stated effective date of January 15, 2019 and the reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- Breach of a material term of the tenancy agreement that was not corrected within reasonable time after written notice to do so.

In the box that is entitled "Details of Cause" on the 1 Month Notice, the landlord wrote: "Please see attached." A one-page type-written document entitled "Details of Causes" accompanied the 1 Month Notice. The Details of Causes provides for a series of events that allegedly occurred after October 25, 2018 agreement was reached, as follows:

Time line of events following the dispute resolution October 25th, 2018:

November 1 – noise complaint from neighbor.

November 1 – Staff entered unit to do repairs – Staff witness haze of smoke and strong smell of cigarette smoke in the unit.

November 2 – Letter of complaint given to staff regarding loud noises coming from #15 unit.

November 5 – Letter of complaint given to staff regarding ongoing disturbance coming from unit 15. The tenant also states she had felt frightened by his behavior at times.

November 23 – text from tenant reporting excessive noise coming from unit 15. Also reported Mathew knocked on her door at 4 am. Tenant did not answer the door.

November 26 – text from tenant alleging Mathew entered her unlocked unit when asleep and stole belongings. Tenant also complained of loud noise coming from unit 15.

November 29 – Staff at Foxridge doing inspections, witnessed loud noises that sounded like things being moved around and dropped on the floor when in the unit directly below unit 15.

November 29 – text from neighbor at 11:43 pm reporting loud noise and yelling and screaming coming from unit 15; neighbor called RCMP.

Below, I have summarized the submissions of both parties with respect to the key issues.

Smoking in unit

The landlord alleged that the tenant was smoking in the rental unit on November 1, 2018. The landlord's agent DD testified that she and a maintenance person entered the rental unit and observed a smoky haze and a strong smell of cigarette smoke. The landlord stated the maintenance man wrote a letter to describe his observation and could be called testify if necessary.

The tenant's mother stated she was in the rental unit with her son at the time of entry by DD and the maintenance man. The tenant's mother acknowledged that DD made a statement that the rental unit smelled of smoke. The tenant's mother stated that her son had not been smoking in the unit. Rather, the tenant and the tenant's mother are both smokers and their clothes likely smell of smoke. In her written submission, the tenant's mother also explained that she had brought cigarette butts for her son to roll and that would have had a smell of cigarettes but that there was not haze. In the written submission, the tenant's mother also stated that she had just sprayed air freshener.

The maintenance man wrote of the entry into the unit on November 1, 2018 and acknowledged that the tenant's mother held up a bag of cigarette butts in an attempt to explain the smell of smoke; however, the maintenance man wrote that it was obvious that it was fresh cigarette smoke in the air and not the smell of the butts in the bag.

Loud noises

The landlord described how multiple complaints have been received from other tenants concerning excessive noise coming from the rental unit. The landlord received complaints on November 1, 2, 5, 23 and 29, 2018. Also, staff witnessed loud noises coming from the tenant on November 29, 2018.

The tenant's representative was of the view that the other tenants are making up false allegations about her son after being solicited by the landlord to make complaints about him. I explored with the tenant's representatives reasons she believes the landlord would be motivated to rely upon false evidence to end the tenancy when the landlord is in the business of providing subsidized housing to mentally ill persons. The tenant's representative responded by stating that she has made complaints about the landlord and the tenant's representative acknowledged that there may be easier tenants to deal with than her son. The tenant's representative acknowledged that she is not satisfied with the landlord and the living arrangement but that she wants her son to stay in the rental unit for the time being because there is nowhere else to take him.

The landlord responded by expressing frustration that the landlord's agents have tried to work with the tenant for approximately three years and he has failed to participate in meetings with the case worker and the tenant continues to break the building rules despite their efforts. The landlord does not want to evict people but is of the view that it cannot continue to permit the tenant to break the building rules and unreasonably disturb the other occupants. The landlord's agents denied soliciting other tenants for complaints. Rather, the landlords' agent explained that when other tenants complaint about another tenant the landlord's agent advises them to put the compliant in writing.

The tenant's representative submitted that her son was hospitalized following a mental health episode on November 1, 2018 and was in the hospital for 7 days so the complaints of November 2 and 5 probably pertained to the episode of November 1, 2018. The tenant's representative was of the view that the episode of November 1, 2018 was a medical issue related to the tenant's mental health and that the landlord has a duty to accommodate the tenant's mental health problems. The tenant's representative stated the incident of November 29, 2018 was also the result of a mental health episode and that loud noises during the day are is not a noise violation.

The landlord was of the position that it takes the complaints of its tenants seriously and the landlord must also protect the quiet enjoyment of its other tenants. The landlord pointed out that it provides independent living units and the Residential Tenancy Act applies to its rental units. The landlord confirmed that it does not provide assisted living and is not a mental health facility, or other type of facility that is exempt from the Act.

Other disturbances

The landlord submitted that a complaint was received November 23, 2018 from another tenant alleging the tenant was knocking on her door at approximately 4:00 a.m. Then, on November 26, 2018 an allegation was made by the same tenant that the tenant had entered her unit while she was sleeping.

The tenant's representative pointed out that the other tenant making allegations merely stated in her complaint that she "thinks" it is the tenant that is responsible for such activity.

Upon review of the complaints of November 23, 2018 and November 26, 2018, I noted that the complainant clearly states that it was the tenant who was knocking on her door on November 23, 2018; however, the complainant does states that she "believes" it was the tenant who entered her unit on November 26, 2018.

Order of Possession if 1 Month Notice is upheld

If successful, the landlord indicated it was willing to accept an Order of Possession effective on February 15, 2019. The tenant's representative requested a number of months to vacate if the landlord was successful. The landlord acknowledged that a rent cheque had been received from the Ministry for the month of February 2019 but that the landlord has not cashed it.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where multiple reasons are indicated on a notice, it is only necessary to prove one of the reasons in order to end the tenancy. The burden of proof is based on the balance of probabilities.

Upon consideration of everything before me, I provide the following findings and reasons.

It was alleged by the landlord that the tenant's conduct, including frequent instances of loud noise, is disturbing other tenants of the property. The landlord presented multiple complaints written by different tenants to demonstrate other tenants have been disturbed by the tenant due to loud noise on a number of occasions and evidence of letters written by the landlord to the tenant to inform him of these complaints. One letter in particular is dated August 10, 2018 and indicates that further complaints will result in a Notice to End Tenancy. Also, with respect to disturbances of other tenants, is an allegation by another tenant that the tenant was knocking on her door at 4:00. Considering the tenant was not at the hearing to speak to the allegations, and he did not otherwise provide me with his written statement in response to the allegations; and, the tenant's representative was not present when the noise disturbances and knocking on another tenant's door at 4:00 a.m. allegedly took place, I find the landlord has provided sufficient

evidence to satisfy me, on a balance of probabilities, that the other occupants of the property have been frequently and disturbed by loud noises caused by the tenant.

Exceeding loud noise, or frequent and ongoing noise, is a ground for finding a breach of a tenant's right to quiet enjoyment. Where tenants are being unreasonably disturbed by another tenant, the landlord is expected to take action against the offending tenant and section 47(1)(d)(i) of the Act permits a landlord to end a tenancy where a tenant has unreasonably disturbed other occupants of the property.

While the tenant's loud noises may be attributed to his mental health, at least in part, as pointed out by the landlord the tenant is to participate in meetings with the landlord and case managers with the health authority and has not done so, which I find to be an aggravating factor. In addition, I recognize that the landlord is in the business of providing subsidized rental housing to persons with mental health issues and I accept the landlord's position that it tries to work with tenants before resorting to eviction. Therefore, I accept that the landlord is to the point where their efforts to continue this tenancy and protect the quiet enjoyment of other tenants have been exhausted as being the reason for ending the tenancy. I am not persuaded that the landlord is fabricating evidence in retaliation to complaints made by the tenant's representative or to replace the tenant with an "easier" tenant, as alleged by the tenant's representative.

Although I appreciate the desperate situation of the lack of housing for persons with significant mental health or behavioural issues, as explained by the tenant's representative, the residential property in this case is comprised of independent living units to which the *Residential Tenancy Act* applies and under the Act the landlord has a duty to protect the quiet enjoyment of all of its tenants. Where other tenants are being unreasonably disturbed by a tenant, and the behaviour is severe or frequent and ongoing, that is a basis for ending the tenancy as the other occupants of the property cannot be forced to continue to be unreasonably disturbed, even if the offending tenant has nowhere else to live.

All the above considered, I find the landlord has satisfied me that the Notice to End Tenancy for Cause issued on November 30, 2018 should be upheld on the basis the tenant has unreasonably disturbed other occupants of the property. As such, I find it is unnecessary to give further consideration to the allegation that the tenant was smoking in the rental unit or entered another rental unit.

As I pointed out during the hearing, the effective date should have read January 31, 2019 since the Notice was mailed to the tenant on November 30, 2018, meaning he likely received it in December 2018, and the tenant pays rent on the first day of every month. The effective date automatically changes to read January 31, 2019 pursuant to section 53 of the Act and the Notice is not invalidated due to an inaccurate effective date.

Having upheld the Notice to End Tenancy, the landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act. I appreciate the plight faced by the tenant and his mother

in finding other accommodation for the tenant. I have also considered that the landlord has a rent cheque for the month of February 2019 in its possession. Therefore, I issue an Order of Possession with an effective date of February 28, 2019 to the landlord with this decision.

Conclusion

The tenancy shall end and the landlord is provided an Order of Possession effective on February 28, 2019.

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 30, 2019

Residential Tenancy Branch