



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FF

Introduction:

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:22 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. on April 18, 2019. I find there was a problem with the telephone system as the conference portal showed the landlord in attendance at 11:02 a.m. but they were not present when I dialed into the conference at 11:03 a.m. The landlord explained later they had tried twice to enter the conference, TELUS told them the moderator was not in the conference and they contacted the Residential Tenancy Branch. The matter was resolved later as explained below.

The tenant attended the hearing and gave sworn testimony. She was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

The tenant provided evidence that she served the Application for Dispute Resolution by express mail and the landlord later acknowledged receipt. The One Month Notice to End Tenancy for cause is dated February 19, 2019 to be effective March 31, 2019 and the tenant confirmed it was served in their mail slot on February 19, 2019 and she had also received the landlord's evidence. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a Notice to End Tenancy for cause pursuant to section 47.

Issues to be Decided:

Has the landlord proved on the balance of probabilities that there is good cause to end the tenancy? Or is the tenant entitled to any relief?

Background and Evidence:

Although the landlord was not in attendance during the hearing with the tenant, she had submitted a significant amount of evidence. The tenant said the tenancy commenced about October 2011 and rent is \$1535 a month. The Notice to End Tenancy is a one month notice given for cause pursuant to section 47 of the Act. The causes stated are that the tenant or a person permitted on the property by the tenant has

- (a) Significantly interfered with or unreasonably disturbed another occupant or the landlord;

There appeared to be a significant amount of documentary evidence against cancelling this Notice to End Tenancy and it appeared the landlord was not in attendance due to a telephone glitch. Therefore, I confirmed that the tenant had received the evidence of the landlord and then I went over it with her, reading each paragraph. She agreed that all of the events had occurred and they were due to her partner's drinking. Some events were listed from 2015 but I list only those occurring since November 2018. On November 28, a noise complaint was made by a neighbour and the male tenant was taken into custody for the evening.

February 10, 2018, the landlord received texts from the lower suite tenants regarding noise. The upstairs tenants were playing loud music, yell-singing and sounding intoxicated. The female tenant, when contacted, said she wasn't home and they leave when the male tenant is drinking. The male tenant said there was no noise. The lower suite tenants followed up with stating many other issues with noise, fighting, yelling, loud music, stomping and banging at all hours dating back to the summer.

The landlords canvassed other neighbours who confirmed the continuing loud music from the car in the driveway, the subject tenants' use of offensive language, their fighting, police responding at late hours and early morning and excessive cannabis fumes.

The landlords state they talked with the tenants but the behaviour of disturbing other neighbours continues. The male tenant does not take responsibility for the noise. The upstairs tenants say their health is being affected and they are thinking of moving out.

The female tenant agreed all of these problems existed and said she can't do anything when the male tenant is drunk. She can't do anything about the complaints. She has been with him for 27 years and loves him but he thinks no one does. She said he has promised to stop drinking and he has for a month. She said her daughter told the landlord that this behaviour has been going on for years and when the male tenant is drinking, they leave and stay in their car until they think he is asleep.

There have been further incidences after the Notice to End Tenancy was issued on February 19, 2019 but they are not listed in this decision as they were not the reasons for issuing the Notice.

After the tenant admitted all the incidences had occurred, I told her the landlord had sufficient reason to end the tenancy. She said she had been looking for a place so I asked her when she might vacate. She agreed to vacate by June 30, 2019 and clarified that she is to pay rent for May and June.

Analysis:

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached. I find that the landlord is entitled to an Order of Possession. I find the weight of the evidence is that the landlord has good cause to end the tenancy. I find the behaviour of the male tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find he gets intoxicated and is very noisy with music and yelling which has seriously disturbed the other tenants. The downstairs tenants have written a letter detailing the significant problems they have had for a long period and how their health has been seriously jeopardized by lack of sleep from the noise, yelling and police visits. At one point, I find the police kept the male tenant in custody overnight. The neighbours complain he yells in front of their homes when he is intoxicated and apparently his partner and daughter stay in their car when he is behaving like that until he settles down. The female tenant agreed in the hearing that all of this was true but she did not get written warning. I advised her that the landlord is not required to give a written warning under those causes in section 47 and I find the weight of the evidence is that the landlord spoke with them a number of times to try to resolve the problem. She agreed that it was fair to issue the Order of Possession for June 30, 2019 to give her time to move.

Due to the evidence on the Telus conference system, that the landlord was at first present in the conference and then was disconnected, I considered it fair to contact them after the conference ended. The landlord discussed the telephone problem and my hearing with the tenant. She agreed that an Order of Possession for June 30, 2019 was a reasonable compromise in the circumstances in order to avoid Review and a subsequent hearing.

Conclusion:

I dismiss the application of the tenant due to the overwhelming evidence that there is good cause to end this tenancy pursuant to section 47. The tenancy ended on March

31, 2019. I find the landlord is entitled to an Order of Possession effective June 30, 2019 as agreed by both 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: April 18, 2019

Residential Tenancy Branch