



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC CORE PROPERTY MANAGEMENT LIMITED AS AGENT FOR
PENTICTON APARTMENTS LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On May 10, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* seeking to cancel a One Month Notice to End Tenancy for Cause dated April 26, 2019.

The Landlord and Tenant appeared at the hearing. The Tenant was assisted by an advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Landlord testified that she received the Tenant's documentary evidence a few days before the hearing. She testified that she had an opportunity to consider the evidence and did not object to the evidence being accepted and considered in this hearing. The Tenants evidence that was received by the Residential Tenancy Branch on June 18, 2019 is accepted.

Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy began on May 1, 2000, and is on a month to month basis. Rent in the amount of \$499.00 is due by the first day of each month.

The Tenant was previously an onsite manager of the rental property until September 2018. The Tenant testified that she was the onsite manager for 20 years.

The Landlord testified that she has received numerous written complaints about the Tenant from other occupants of the rental property. The Landlord testified that the complaints are regarding noise disturbances; drug activity; fighting; and unauthorized persons being let into the building by the Tenant or a person permitted on the property by the Tenant.

The Landlord served the Tenant with a One Month Notice To End Tenancy For Cause dated April 26, 2019 ("the One Month Notice"). The One Month Notice has an effective date of May 31, 2019.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

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 has engaged in illegal activity that has, or is likely to:

- *Damage the Landlord's property*
- *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*

Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site property /park

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice within the required time period.

The Landlord provided testimony that other occupants of the rental property are threatening to move out, or have already moved out due to the actions of the Tenant and her guests. She submitted that the Tenant continues to permit shady people onto the property who are stoned; using drugs; disturbing others; threatening others; leaving drug paraphernalia; and leaving junk on the property, throughout the day and night. She submitted that the other occupant's safety and right to quiet enjoyment is being affected by the Tenant.

The Landlord provided a copy of letter dated January 6, 2019, sent to the Tenant explaining that the Landlord has received an abundance of complaints about her and her guests and providing her with a final warning.

The Landlord provided copies of letters of complaint she received from other occupants of the rental property including the following:

- April 15, 2019, letter from an occupant indicating that numerous people were entering the Tenants unit and were smoking and making noise in the hallway.
- April 30, 2019, letter from an occupant threatening to move out due to fighting between the Tenant and another occupant; noise of people yelling up to the Tenant's balcony; the Tenant buzzing people into the building without asking who they are; people from unit #14 and #17 strung out on drugs and yelling profanities.
- An undated letter from an occupant that indicates the occupant is being disturbed by loud arguments at 2 AM and a constant revolving door of people between suites #14 and #17.
- March 7, 2019, letter from an occupant in unit #27 indicating that the Tenant has been letting vagrant heroin addicts into the building. The letter indicates that when asked who let them into the unit, they replied it was the Tenant. She submits that the Tenant is letting dangerous and unsavory people into the building.
- Text messages received from unit #27 between February and April, 2019 regarding disturbances and concerns of which some are related to the Tenant.
- An undated letter from an occupant indicating that they have moved out the building due to noise disturbances and safety concerns.
- April 26, 2019, letter from an occupant indicating the occupant will be moving out due to safety concerns at the rental property. The letter indicates that unsavoury people are being let in the building and they are hanging around unit #16 and #17.
- An undated report from an employee indicating that there are people calling up to the Tenant's balcony and people found sleeping in the building who claiming to know or be related to the Tenant.

The Landlord testified that the Tenant permitted Mr. T.D. to stay in her rental unit while she was in the hospital. The Landlord testified that the Tenants guest, Mr. T.D. has a criminal record and there was a constant flow of people into the Tenants unit.

A copy of text message dated May 15, 2019, which indicates the traffic down below is pretty nuts with the Tenant in the hospital, they have just gone wild, throwing sticks and calling different names and there have been at least a dozen people trying to get in.

The Landlord testified that a probation order was found on the property that indicates a person named Mr. K.S. is residing in the Tenant's unit. The Landlord submitted that Mr. K.S. is not an authorized Tenant. The Landlord testified that the police confirmed that Mr. K.S. provided the Tenants address as his residence.

The Landlord testified that the Tenant has informed her that she has numerous people living with her.

The Landlord testified that the Landlord is spending approximately \$6,000.00 per month for building security.

The Landlord testified that she is trying to protect the other occupants of the rental property and that other occupants do not feel safe on the property. The Landlord testified that when the Tenant was an onsite manager she partied with the other occupants of the rental property. The Landlord testified that the Tenant was relieved of her position in September 2018, due to irregularities and cash going missing.

In response to the Landlords testimony, the Tenant's advocate Ms. K.S. submitted that most of the Landlords evidence is circumstantial and does not deal with the Tenant.

The Tenant testified that there have been problems at the rental building for the past 22 years. She testified that she was assaulted on three occasions and was maced by Tenants when she was a manager of the property.

The Tenant testified that in May 2019, she had surgery for cancer. She testified that she is awaiting further chemotherapy treatment and requires a care-aid.

The Tenant testified that some of the visitors to the rental property are her friends. She submitted that she cannot be responsible for everybody. She testified that she yells to people in her unit because she is sick and not mobile.

The Tenant testified that on June 9, 2019, she went down to the lobby to speak to a security person who was not permitting guests into the unit after 10:00 PM. She testified that the

security person blocked her from letting a friend into the building and scuffle occurred between her and the security person.

The Tenant testified that she has known Mr. K.S. for years and he asked the Tenant to write a letter; however, he does not live with her in the unit.

The Tenant testified that the Tenant residing in unit #10 only moved out of the building due to wheelchair access issues and issues regarding repairs that were not addressed.

With respect to Mr. T.D. staying in her unit while Tenant was in the hospital, she testified that he was staying there for approximately two weeks and he was letting friends into the apartment. She testified that when she heard he was letting people into the unit, she asked him to leave.

The Tenant testified that she informed the Landlord that she has a care aid living with her. She testified that her care aid has a licence and she does not pay her any rent.

The Tenant testified that her way of life is not the same as it was before. She stated that she is sick. She testified that she does not do drugs.

In conclusion, the Tenant's advocate submitted that the evidence against the Tenant is circumstantial and that the building is unsecured.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

In the matter before me, the Landlord has the onus of proof to prove that there is sufficient cause to end the tenancy. Based on the evidence and testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the Landlord is obligated to ensure that all the occupants of the rental property have quiet enjoyment of the rental property free from unreasonable disturbance. The Landlord is obligated to take action against Tenants who are unreasonably disturbing other Tenants.

I find that pursuant to section 47 (1)(d)(i) of the Act the Landlord may end a tenancy if the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property.

I find that the majority of the written complaints that the Landlord received from other occupants of the property specifically reference the Tenants unit as being involved in the disturbance or concern. I find that the Landlord has provided complaints from numerous occupants and I find that the Landlord's evidence is not circumstantial.

I find that the Tenant testified that she permitted Mr. T.D. to stay in her unit while she was in the hospital and I find that Mr. T.D. permitted people onto the property and engaged in activity that caused disturbances to other occupants of the rental property.

I find, on a balance of probabilities that the Tenant is responsible for unreasonable disturbances to other occupants of the rental property.

The Tenant's application to cancel the One Month Notice is not successful. The Tenant's application is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession of the rental unit. Since the effective date of the Notice has passed, I find that the Landlord is entitled to an order of possession effective no later than 1:00 pm on June 30, 2019, after service on the Tenant.

The Landlord is granted an order of possession effective no later than 1:00 pm on June 30, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

I find that the Landlord has provided sufficient evidence to establish that the Tenant is responsible for unreasonable disturbances to other occupants of the rental property.

The Tenant's application to cancel the One Month Notice is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on June 30, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

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: June 26, 2019

Residential Tenancy Branch