



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAKELH & QUESNEL COMMUNITY HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On May 13, 2019, the Tenant submitted an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause dated May 2, 2019.

The Landlord and the Tenant's agent appeared at the hearing. The Tenant did not attend. 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 Matters

When the Tenant's agent was given an opportunity to respond to the Landlord's testimony and evidence he submitted that the Landlords' actions are tied to their religious beliefs. He submitted that the Landlords discriminate against people who do not share their standards or beliefs.

The Landlord immediately objected to her religion being brought into play and stated that she will exit the hearing and contact her lawyer.

The parties were informed that regardless of a person's religion, a Landlord needs to have sufficient cause and evidence in order to end a tenancy. The Tenant's agent was directed to not refer to religion and was directed to focus on responding to the evidence submitted by the Landlord. The hearing proceeded.

During the hearing it was established that the co applicant, Mr. D.D. is not a Tenant of the Landlord.

Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy?
- Should the One Month Notice be cancelled?

Background and Evidence

Both parties testified that the tenancy commenced on January 21, 2019, on a month to month basis. Rent in the amount of \$800.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$400.00 and a pet damage deposit of \$400.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that there is an issue concerning the Tenant making noise disturbances. The Landlord testified that the noise from the Tenant is affecting other occupants and the Landlord has received complaints from other occupants of the rental property.

The Landlord issued a One Month Notice to End Tenancy For Cause.

The Landlord selected the following reason for ending the tenancy in the One Month Notice:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*

The Landlord provided copies of letters sent to the Tenant including the following:

- A letter dated March 21, 2019, indicates the Landlord received numerous complaints from neighbours about noise coming from her apartment late at night. On March 20, 2019, two different neighbours complained.
- A letter dated April 3, 2019, indicates the Landlord received a noise complaint at 5:00 am on March 28, 2019.
- A letter dated April 3, 2019, indicates that on March 29, 2019 at 11:30 am the Tenant went to the unit above and started yelling and swearing at the Tenant.
- A letter dated June 9, 2019, from an occupant of the rental property who lives above the Tenant, which indicates that on March 29, 2019, the Tenant knocked on their door at 11:30 am and when he answered the Tenant upset about noise and was irate, shaking and swearing. The letter indicates that noise from below has continued, not every night but frequently.
- A letter from the Landlord dated April 5, 2019, informing the Tenant that they have reconsidered issuing the Tenant an eviction notice.

- A letter dated May 21, 2019, indicates the Landlord received a complaint from an occupant of the rental unit about yelling, screaming and swearing coming from the Tenant's apartment at 2:30 am on May 2, 2019.
- A letter from an occupant of the rental property that indicates that she was awoken and kept awake by foul language from the Tenants unit.
- An email from construction workers who were on the property on the evening of May 1, 2019, and overheard an argument coming from the Tenants unit from 8:30 pm until 10:45 PM. The email indicates that the language was loud, angry and inappropriate.

The Landlord also testified that after they checked on the Tenant's well-being on February 16, 2019, they found her unconscious on her bed and called an ambulance. The Landlord testified that there were numerous wine bottles and marijuana vape pens in her apartment.

The Landlord submitted that the disturbances from the Tenant are likely tied to her addiction issue. The Landlord testified that sometimes her behaviour is out of control.

The Landlord testified that another occupant of the rental unit informed the Landlord that the Tenant's boyfriend Mr. D.D. was knocking on doors trying to get support for the Tenant. The Landlord asked the Tenant to stop doing this.

In response to the Landlord's testimony and evidence, the Tenant's agent submitted that the Tenant was going through a divorce. He submitted that the Landlord's religion is related to reason for ending the tenancy. He submitted that the Landlord is being a bully. He submitted that she was not home on March 20, 2019.

The Tenant's agent referred to a letter of support dated April 4, 2019, where the occupant states that she has never heard a lot of noise coming from the apartment. The letter indicates that they are not noisy people in my opinion, very quiet actually.

The Tenant's agent submitted that the Landlord told them to not solicit letters of support; however, the Landlord got letters of support. He submitted that other occupants would not help him due to fear of reprisal from the Landlord.

The Tenant's agent testified that on March 21, 2019, the Tenant actually complained to the Landlord about noise coming from the unit above and the Landlord said she could not attend. The Tenant provided documentary evidence of the text messaging back and forth from the Tenant to the Landlord. The Tenants agent testified that instead of taking action against the occupant above, the Landlord issued the Tenant the noise complaint letter dated May 21, 2019.

The Landlord testified that she does not always report back to complainants about the steps she has taken against a Tenant when a complaint is received.

The Tenant's agent testified that the Tenants divorce is final. He testified that he attends the Tenant's unit every day for coffee and stays overnight once or twice per week. He testified that he is not there every night.

The Tenant's agent submitted that the Landlord is trying to end tenancies so that the Landlord can increase the rent.

The Landlord testified that the rental property is a non-profit housing society providing housing for indigenous people and some rent subsidy. The Landlord submitted that it is a moderately priced building.

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 to prove that there is sufficient reason to end the tenancy. Based on the evidence and testimony of the Landlord and Tenant's agent, 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 Landlord has notified the Tenant about numerous noise complaints that the Landlord received and cautioned the Tenant with warnings that if she is not respectful to neighbours she will receive an eviction notice.

I find that the Landlord has provided evidence of noise disturbances for five separate incidents. The Tenant was not present at the hearing to provide a response to each incident. The Tenant's agent suggested that the Tenant was not even home on March 20, 2019, but did not support the suggestion with any evidence. In addition, the Tenant's agent testified that he was not present at the unit all the time, so I find that he could not possibly provide first hand evidence in response to each incident.

I have considered the frequency and nature of the disturbances. The disturbances occurred over a three month period and some occurred late at night or early in the morning. I find that the complaints were for noise and included yelling or profanity.

I find 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 Tenants 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 after two days service on the Tenant; however, the Landlord testified that if she was successful with ending the tenancy she agreed to give the Tenant an extra month to find a new tenancy.

The Landlord is granted an order of possession effective no later than 1:00 pm on July 31, 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 July 31, 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 28, 2019

Residential Tenancy Branch