



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 Codes CNC, PSF, RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated September 12, 2019 ("One Month Notice"), for an order for the Landlord to provide the services or facilities required by the tenancy agreement or law, and for an order for regular repairs.

The Tenant and an agent for the Landlord (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant, a neighbour, J.W. ("Witness"), was also present and provided affirmed testimony when directed to call in to the teleconference.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. However, the Tenant said that while she received the notice of a registered mail package from the Landlord, she was unable to attend the neighbourhood Canada Post outlet, due to having had the flu and for other reasons she noted. The Tenant said it was her fault she did not pick up the package.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the onset of the hearing, I advised the Parties that pursuant to Rule 2.3, I would be severing the Tenant's claims that were not related to the One Month Notice. As such, I dismiss the other claims without leave to reapply.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an order of possession, if the One Month Notice is confirmed?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 1, 2016, with a monthly rent of \$755.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$377.50, and no pet damage deposit. The Parties agreed that the Landlord was awarded \$100.00 of the Tenant's security deposit in another dispute resolution proceeding, so the Tenant's security deposit held by the Landlord is currently \$277.50.

The Landlord submitted a copy of the One Month Notice, which is signed, dated, has the rental unit address, and indicates that it was served by posting it on the rental unit door on September 12, 2019. It states that the effective vacancy date is October 31, 2019. The One Month Notice sets out the grounds for the eviction as being that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord, and that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

In their submissions, the Landlord said that since November 2018, they have received several verbal complaints about the Tenant from neighbouring tenants. The Agent said that the complaints have been about the neighbours alleging having been verbally and/or physically assaulted by the Tenant. In the hearing and in a written submission, the Agent said that the other tenants have complained that the Tenant has "...threatened that she and/or her family will 'merk' (slang for kill) them if they speak out against her."

In a written submission, the Agent said:

Until recently, none of these tenants were willing to put their concerns in writing due to the threats, as they feared retaliation. It is since 2 new tenants have moved in, that we have been able to obtain these complaints in writing and other testimony following a tenant fleeing with her children due to concerns for her safety. One of the complainants, who provided a written statement, also called 911 for assistance after she was struck by the Applicant while holding her 1yr old child. Within the evidence package you will also find an additional witness statement to this event.

One of the complaints submitted by the Landlord states the following:

On August 10th, 2019 my neighbour [Tenant at rental unit address] went on a bike ride with her dog and daughter. Her daughter who is five years old returned to the complex on her own. I wouldn't let her go by herself and went with her. We found her mom just outside the complex talking to some people in a car who appeared shady. [The Tenant] appeared angry with me and yelled F*** you and walked to her house. She then came to my house where I was in the front yard and back handed me across the mouth while I was holding my son.

. . .

I called the police as requested by [an agent of the Landlord] on Friday and the Police took my verbal statement about this incident and confirmed the facts matched with the neighbours statements. They then gave [the Tenant] a restraining order not to talk to me or be around me. The police advised that if there is any communication from [the Tenant] that I should call them to advise them of the breach of the order.

. . .

[signature]

Another tenant submitted a statement confirming the last complainant's assertion, saying that she "...witnessed the altercation where [the Tenant] back handed my neighbour [name redacted] in the face while holding her child." This complainant also said that the Tenant approached her and threatened that the Tenant:

. . . or her family will kill all people in my family. This was on or about August 17, 2019.

[The Tenant] on several occasions comes out yelling and screaming at me from her unit which is several houses down.

I feel unsafe in my unit and fearful that [the Tenant] or her family will come into my house throughout the night to do harm to myself and my family. It has come to the point where I am uncomfortable coming out to enjoy my yard if [the Tenant] is outside too.

The Landlord submitted a third complaint letter about the Tenant dated September 5, 2019, from a former tenant who said she had vacated her unit without giving notice, “. . . due to feeling unsafe and afraid to stay in the complex.” This tenant said she felt afraid to stay in the complex, because:

. . . I felt I could not leave the house without being harassed by my neighbour [the Tenant, rental unit address].... As a result, I would order in my groceries and supplies so that I wouldn't have to go out.

I have had threatening notes on my door; both tenants have been seen yelling and screaming in an internet slang for 'kill, murder' and [the Tenant] has indicated that I shouldn't 'mess with them' which I understand meant don't mess with her family. If I didn't comply with a request from [the Tenant] she would yell and scream at me in the complex and at my door, for example if she wanted me to babysit her child or give her a ride somewhere and I didn't, she would be mad and yell for up to half an hour in my front yard. [The Tenant's] behaviour was [erratic] over the past year and I never knew when I would be verbally attacked. I witnessed [the Tenant] pushing a new tenant who was holding her baby in an intimidating way.

. . .

I have fled my unit leaving all personal items in the unit and am too afraid to get my belongings. If I can't arrange someone to pickup my belongings by Monday September 9th, 2019, I realize I will forfeit all items as [the Landlord] will dispose of everything.

The Tenant's Witness called into the hearing to testify on the Tenant's behalf. When I asked the Witness how she knows the Tenant, the Witness said she is a neighbour.

I asked the Witness if she was aware of an August 2019 incident in which the Tenant was involved that ultimately involved the police. The Witness said the following:

I was inside my house and heard yelling. This was the second time I had heard yelling from the tenant - I don't know her name. She had been yelling at some people in her house within an hour. I heard screaming again, it was quite loud, because I was inside my house, I went down stairs. At the top of the street – a short block of tiny townhouses, [the Tenant] was stopped on her bike. I could see a woman talking to her. Their faces were so close. but the shorter woman was in [the Tenant's] face, and she was screaming that loud that you could hear it. I listened and I could hear [the Tenant] saying, 'What's going on? Why are you doing this? Why are you mad at me?' The woman kept screaming. The woman started walking away, screaming. [The Tenant] had a little girl on her bike. I was just standing outside. Then I heard screaming again, then I heard [the Tenant] screaming back. I went to get the little girl. I took the little girl's hand and walked to [the Tenant].

The Witness explained that there are groups of people in this neighbourhood who are antagonistic toward each other, as well as "...sex trade workers and predators around...".

The Witness went on to say:

There were three recent evictions of dangerous people and the third eviction was the one that I was talking about. These two recent people – they sided with the woman who has been evicted. [The Tenant] would say 'I don't want drug dealers around my child.' They would fight with people, set her up to get [the Tenant] in trouble. The last person left because she had street people.... she said if [the Tenant] leaves I'll come back. There's a lot of drug use in here. They cover for each other. They came up to [the Tenant] and other witnesses of the girl who caused this situation. They said, 'We set you up and you fell for it. We've been pushing and pushing you until you broke.' The two beside her have quieted right down, because they actually used to beat people up and they had guns.

The Tenant also submitted written statements from other tenants who spoke on her behalf. In the first statement dated August 29, 2019, "D.W." indicates that she is the Tenant's neighbour two doors down from her. D.W. said she has never once needed to complain about the Tenant. D.W. said: "She is a great Mom, [quiet] neighbour and should not be made to be homeless. She is not ever [physically] violent toward any person."

A second, undated statement is by "N.K.", who said she has lived in the same

neighbourhood as the Tenant for five years. She said she has never witnessed or been in a physical altercation with the Tenant. N.K. went on to say: "From what I've seen she is a quiet neighbour, a good mom and shouldn't be made homeless over something that never happened."

The Tenant submitted a third statement from a neighbour dated August 28, 2019. I find it difficult to read parts of this statement, including writer's name, but I find that it is clearly signed by the writer. This person said that the Tenant has been a neighbour for three years and that the writer has "gotten to know her well." This person's comments include the following:

I can attest to [the Tenant's] awesome abilities at raising her daughter. She puts a lot of time and energy into this and has a very smart, well behaved daughter for her efforts. I do know that consistency and stability are paramount with [the Tenant]. She is always aware of [the Child's] surroundings, and people she associates with. [The Tenant] does set rules and boundaries regarding [the Child] and does let the neighbours be aware of this. [The Tenant] puts so much effort into forming proper [indecipherable] in the housing complex where she lives.

My daughter [S.] and I are [indecipherable] people and will stand up for [the Tenant] anytime.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

There is no evidence before me indicating that a court has found the Tenant to have been involved in criminal actions or activity. Such findings are left for a court to decide beyond a reasonable doubt. My findings are based on the evidence before me and the legislation and are on a balance of probabilities regarding tenants' and landlords' rights and responsibilities.

I find it evident from the Tenant's Witness's testimony that it is not clear whether or not the Witness was commenting on the same incident as were Landlord's witnesses' in their written statements. Further, the Witness indicated that she was inside her house when the incident she witnessed began. As such, I find she did not see what precipitated the yelling between the Tenant and the other person. In addition, since the Witness did not indicate the date on which her observations occurred nor the identify of

the person with whom the Tenant was interacting, it is not clear that it is the same incident as that documented in the Landlord's witness statements.

The written statements submitted by the Tenant are in the nature of character references that commend her ability as a mother and as a quiet tenant. These neighbours indicate that they have not witnessed the Tenant involved in any verbal or physical dispute with anyone. I find that this does not mean that the Tenant was not involved in the altercation set out by the Landlord's witnesses. Rather, it indicates that the authors of the character references did not observe the incident(s). Further, the Landlord's evidence of statements from other tenants is more specific and on point to the issues before me regarding the reason for the One Month Notice. Further, they and the Tenant's Witness's testimony indicate that the Tenant has been involved in disagreements with neighbours to the point of there having been yelling back and forth. I find the Landlord's evidence to be more persuasive on this matter than the Tenant's evidence.

I find on a balance of probabilities that the Landlord's evidence gives an accurate portrayal of the Tenant's behaviour at the residential property. I find that this behaviour is in the nature complained of by the Landlord in the One Month Notice. I find that the Tenant's documented behaviour significantly interfered with or unreasonably disturbed other occupants or the Landlord, and that the Tenant seriously jeopardized the health or safety or lawful right of other occupants or the Landlord.

I find that the One Month Notice is consistent with section 52 of the Act, as to form and content. Based on the evidence before me overall, I find the One Month Notice to be valid and I confirm it. As the effective vacancy date has not yet arrived, and pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord **effective two days after service of this Order** on the Tenant, which service must be on or after October 31, 2019. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible on or after October 31, 2019. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The Tenant's Application to cancel the One Month Notice is unsuccessful. I find that she breached section 49 of the Act by significantly interfering with or unreasonably disturbing another occupant or the Landlord, and seriously jeopardizing the health or safety or lawful right of another occupant or the Landlord. As such, I confirm the validity of the One Month Notice. I dismiss the Tenant's other claims without leave to reapply.

As the effective vacancy date has not yet arrived, and pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord **effective two days after service of this Order** on the Tenant, which service must be on or after October 31, 2019. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible on or after October 31, 2019.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 30, 2019

Residential Tenancy Branch