



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) served by the landlord.

The tenant, her daughter (an occupant of the rental unit), the landlord's property manager, the landlord's building manager, the building manager's mother, also a witness, and a witness appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The witnesses were excused from the hearing until they were ready to testify.

Thereafter all parties were provided the opportunity to present their evidence and submissions orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and / or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues-

Each party confirmed receipt of the other's evidence at the beginning of the hearing and did not raise any issues about the evidence. Later in the hearing, the tenant said that the landlord's evidence was not submitted within the required 14-day deadline.

Other than her claim that she had not received the landlord's evidence within 14 days of the hearing, the tenant made no further comments on the landlord's documentary evidence.

I have accepted the landlord's documentary evidence in full, as the landlord/respondent's evidence was to be received by the applicant/tenant seven days in advance of the hearing. The tenant said the evidence was received on February 24, 2020, which was 11 days in advance of the hearing.

Additionally, the tenant said she could not open the landlord's audio recording, as she did not have the proper equipment. When questioned, the landlord confirmed that she did confirm with the tenant that she had the ability to open the recording, as she assumed that she could with her tablet.

As will be discussed later on, I found I had sufficient evidence to make a decision without having heard the landlord's recording and it was not considered.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony and submissions of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the parties' claims and my findings around it are set out below.

The tenancy agreement stated that the tenancy started on October 1, 2016, monthly rent was \$675.00 and the tenant paid a security deposit of \$337.50. Current monthly rent, according to the landlord, is \$708.00.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a One Month Notice to End Tenancy for Cause. The Notice was dated December 31, 2019, was delivered via personal delivery on that date, listing an effective end of tenancy on January 31, 2020. The tenant confirmed receiving the Notice at 9:03 a.m. on December 31, 2019.

The causes listed on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlords' relevant evidence included a copy of the Notice, a written tenancy agreement, a written summary, warning letters to the tenant, notes to the tenant and a breach letter to the tenant.

In support of their Notice, the landlord SK submitted there have been multiple incidents where the building manager, NC, who is the resident caretaker, has been harassed and intimidated by the tenant and her daughter, RL. The harassment by the tenant and RL caused the caretaker not to be able to do the most basic tasks she is to do around the building. The harassment created fear in NC, who, according to the landlord felt bullied.

As an example, whenever NC leaves her unit, which is across the hallway from the tenant, the tenant or RL race to their door, look out their peephole, letting her know "they are watching".

The landlord submitted that the tenant's actions have terrified NC and her mother, who lives with NC. The landlord submitted that NC is 4 feet, 9.5 inches tall and the tenant is at least 6 feet tall and RL is at least 5 feet, 8 inches.

The landlord said they had received a complaint of harassment from a tenant about the tenant and RL, both making racist comments, negative statements, making that tenant afraid to use the common laundry room.

NC, according to the landlord, has had vulgar language directed at her, but that NC was afraid to call the police.

The landlord said that NC has called her, crying, and saying she was afraid of the tenant and RL. NC's mother is scared to leave her unit, according to the landlord.

The landlord submitted that when the Notice was issued to the tenant, the tenant came out and circled around them, saying, "You fat bitch, you're going to die". The police were called thereafter.

The landlord said that the tenant and RL seemed to take joy in harassing NC and her mother.

Building manager's (NC) relevant testimony included-

NC said that basically everyday when she leaves, the tenant races to the peephole in their door, making noises and saying things, to let her know they are watching her.

NC said that in May, RL began accusing her of filming RL; however, that accusation was false. Thereafter, the tenant and RL came out of their door and began using profanity. NC said she heard RL saying about NC, that she was "just a bully and retarded". Later that day, NC received a call from the police saying that RL reported NC of calling her a "dyke" and spitting in her face. NC said that was another false report, and said that she was 4 feet, 9 ½ inches tall and that RL was 5 feet, 8 or 9 inches tall.

NC says that whenever she tries to clean around the property, the tenant and RL follow her around to intimidate her. NC says she has had to change her schedule to accommodate the tenant's and RL's work schedule, as she is afraid to be out on the premises when they are home.

NC said that when the tenant and RL arrive, they purposefully spill their coffee drinks all along the way and at their front door, so that NC will have to clean up after them.

NC said that when she served the Notice, RL yelled out, "You fat bitch, you're gonna die". On the day of the death threat, NC said her mother had a panic attack. NC said she is afraid the tenant and RL will hurt her mother.

NC said that she is now taking medication for anxiety due to the stress of dealing with the tenant and RL.

NC said she feels like she is in prison now as she is afraid to leave her unit and no longer enjoys living in her home.

NC's mother's relevant testimony included-

The mother, who lives with NC across the hallway from the tenant, said that when the tenant and her daughter talk to NC, they are very mean and at one time, she thought RL was going to hit NC.

The mother said that the tenant and RL have seriously impacted their life, she is always worried about their safety, and they do not enjoy living there anymore.

The mother said they are afraid of the tenant and RL.

Landlord's witness' relevant testimony included-

The witness said her mother used to live in the apartment building, and one day, when her mother was ill, she took her clothes to the laundry room. At this time, the tenant "lost it" on her. The tenant thought that the witness was touching her clothes.

Tenant's relevant testimony in response included-

The tenant submitted she has asked for dates and times of any alleged incidents and has not been given any.

The tenant submitted that she and RL live simple lives, work hard, and keep to themselves. The tenant submitted they still do not know why their tenancy is in jeopardy.

The tenant questioned why they would go out of their way to jeopardize their tenancy with the rising rental rates.

The tenant submitted that she feels hers and her daughter's rights and freedom of coming and leaving the building is impacted and that NC is bullying them.

The tenant submitted that she has prevented two cars from being stolen since she has lived there, and received thanks from the constable and the car owner.

The tenant said when she sees NC, she always says a polite hello to NC, like "how ya doing"?

The tenant does not understand why there is now a problem. One instance, when she comes into the building with groceries, NC did not even bother opening the door for her.

The tenant said she has lived there for four years and said that RL has had the same jobs and boots. The tenant said this proves that RL is not purposely leaving muddy footprints, as alleged by the landlord.

The tenant said she had no idea NC or her mother had a medical condition and that they are themselves stressed living there. The tenant said she avoids NC and they feel

like they are prisoners living in their rental unit. The tenant also said she has gone to the hospital.

The tenant said that when RL is dropped off from work, that is the time NC comes out to do her chores.

When questioned, the tenant said she has not addressed her concerns in writing to the landlord. The tenant said the landlord, SK, has not been a witness to any of the alleged events.

The tenant said she had paid rent for the month of March 2020.

The tenant's relevant evidence included a written submission, a letter to the landlord about adding another occupant to the rental unit, a rental listing, the tenancy agreement and a reference letter from a former landlord.

Analysis

Based on the foregoing oral and written evidence, and on a balance of probabilities, I find as follows:

Once the tenant made an application to dispute the Notice issued pursuant to section 47 of the Act, the burden of proof is on the landlord to prove the causes listed on the Notice.

After considering all of the written evidence and oral evidence submitted for this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord and has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In reaching this conclusion I relied on the landlord's undisputed testimony that the tenant's daughter, RL, uttered a death threat to the resident caretaker, NC. I considered that it also went undisputed that the tenant's daughter called NC a bully and retarded.

I find a reasonable person would fear for their safety and security and would be unreasonably disturbed by such behaviour.

I concluded that the heights of NC, the tenant, and RL were as described by the landlord, as this also was not disputed by the tenant.

I do not find it reasonable that a person who is or nearly 6 feet tall and another person who is at least 5 feet, 8 inches tall would feel threatened or bullied by someone who is 4 feet, 9.5 inches tall.

On balance, I prefer the testimony of the landlord. I found the landlord's testimony regarding the actions of the tenant was credible and consistent. The tenant's testimony, on the other hand, was self-serving and not persuasive.

For the above reasons, I therefore confirm the notice to end tenancy and dismiss the tenant's application.

I am satisfied that the notice to end tenancy for cause dated December 31, 2019 meets the requirements regarding form and content as set out in section 52 of the Act. 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 order of possession. Accordingly, I grant the landlord an order of possession effective 1:00 p.m., March 31, 2020.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective 1:00 p.m., March 31, 2020. The tenant must be served with the order of possession to be enforceable. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: March 11, 2020

Residential Tenancy Branch