



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP WEST COAST REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for end of employment⁸(the 1 Month Notice) pursuant to section 48;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed that the landlord served the tenant with the submitted documentary evidence in person. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, extensive discussions took place to clarify the tenant's application for dispute. The tenant clarified that the selection to dispute a 1 month notice to end tenancy for end of employment was made in error. The tenant provided details that he was served with a 1 month notice to end tenancy for cause.

The tenant also confirmed that he had filed an amendment to the application for dispute of a 10 Day Notice. Both parties confirmed that the 10 Day Notice in dispute is unrelated to the 1 month notice and is already subject to a scheduled dispute resolution hearing as per an application filed by the landlord for April 23, 2020. Both parties agreed that the tenant's amendment to cancel the 10 Day Notice could be addressed during that hearing. On this basis, the tenant's amendment request to cancel the 10

Day Notice is adjourned to be heard on April 23, 2020 at the same time as the landlord's application already set.

The hearing shall proceed on the tenant's clarified application to cancel a 1 month notice issued for cause.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

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

Both parties confirmed that on January 28, 2020, the landlord served the tenant with the 1 Month Notice dated January 22, 2020 in person. The 1 Month Notice sets out an effective end of tenancy date of February 29, 2020 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or 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; or
- the 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.

The details of cause listed on the notice state:

Constant trail of people in and out of the unit at all hours of the day and night. People yelling and screaming outside in and out of vehicles at all hours. People coming into the unit with and without the current tenants supervision for short 10 or 15 minute time frames. All of which is on video.

[reproduced as written]

Extensive discussions during the hearing revealed that the landlord's reason for cause, "Tenant has allowed an unreasonable number of occupants in the unit/site" is the tenant and his ex-wife for a total of two persons. The landlord was unable to provide any supporting evidence of the maximum number of occupants for 1 person in any documentary evidence. On this basis, with the lack of supporting evidence, that 2 persons are an unreasonable number of occupants for this rental, I find that this reason for cause by the landlord is dismissed.

On the 3rd and 4th reasons for cause selected by the landlord, "Tenant or a person permitted on the property by the tenant has seriously jeopardized the health, or safety, or lawful right of another occupant or the landlord; and put the landlord's property at significant risk" the landlord was unable to provide sufficient details for these selections. On this basis, the landlord's 3rd and 4th reasons for cause are dismissed.

On the 5th, 6th and 7th reasons for cause, "Tenant or a person permitted on the property by the 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; and jeopardize a lawful right or interest of another occupant or the landlord", the landlord has failed to provide sufficient details of any illegal activity by the tenant or their guests. The landlord primarily relates that there are numerous people coming in and out of the rental building and that they look "shady". I find in this circumstance that without any details or supporting evidence of illegal activity that these reasons for cause listed by the landlord are dismissed.

The landlord also seeks an end to the tenancy for the 2nd reason for cause selected of "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 stated that numerous people coming and going to the tenant's rental unit have disturbed other tenants in the rental building. The tenant disputes this claim stating that at no time has any of their guests disturbed other tenants. The landlord referred to the submitted letter noted as Appendix E from tenants living above the named tenant which states in part,

Our names are T. and R.J., we are the upper floor tenants that reside at...we have been renting here for just over 3 years now and since the day we have moved in we have been used to quiet and have had the same with other tenants that have recently moved, at the end of December M.D. moved into the lower part of the house me and R. live in, since day one we had an issue as he just walked into our garage and entered our basement room without knocking, he did that twice a day...The same evening there was a lot of people coming late in the

evening, I was assuming help with move in, as the nights went it progressed to 10 up to 16 different people coming and going from the hours of 11pm until around 5:30 in the morning this was happening every night, we have security cameras one being at the front of our garage which M. has no portion of that area, we have none as well at the garage door that faces our door, as well as one at our main entrance of the house, they do not cover any areas of other tenants other than our doors, they are motion censored and a notification comes to our phones so our phones going off all night long we had to turn our volume off...The traffic of people continued for about 4 more nights, we were frustrated over this as it had been happening for about 6 weeks...
[reproduced as written]

The tenant further argued that the landlord's statements and those of these other tenants were false. The tenant was unable to provide any form of supporting evidence that the complaint letter submitted by the landlord was fraudulent.

In support of these claims, the landlord has also submitted copies of:

Breach letter dated January 7, 2019 re: illegal activity/complaints of excessive amounts of different vehicles entering and exiting the property at all hours of the day and night.
26 videos of numerous persons entering and exiting the rental unit day and night.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Both parties confirmed that the landlord served the tenant with a 1 month notice to end tenancy issued for cause. In this case, the landlord has provided affirmed testimony that the tenants are significantly interfering or unreasonably disturbing another occupant (other tenants) in this rental property. The landlord has provided a copy of a complaint letter from tenants who live upstairs of the named tenants. The contents of the complaint letter detail numerous activity of different persons coming and going to the rental unit during the day and night. The complaint letter also provides details that the tenant's guest enter the upstairs tenants private area and manipulate their motion sensor cameras disturbing these tenants during the day and night. The tenant has argued that the complaint letter submitted by the landlord was fraudulent, but did not provide any supporting evidence to show that the letter was fraudulent. On this basis, I

find on a balance of probabilities that I accept the evidence of the landlord over that of the tenant. I find that the tenant or his guests have significantly interfered with or unreasonably disturbed another occupant (other tenants) as shown by the submitted complaint letter. The tenant's claim of a fraudulent document (complaint letter) is unsubstantiated and without merit. The tenant's request to cancel the 1 month notice dated January 22, 2020 is dismissed. The 1 month notice dated January 22, 2020 is upheld. Pursuant to section 55 of the Act, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date of the notice has now passed.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. 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: April 07, 2020

Residential Tenancy Branch