



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to sections 47, 62 and 72 of the *Residential Tenancy Act*. The tenant applied for an order to set aside a notice to end tenancy for cause and for an order directing the landlord to comply with the *Act*. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

These parties have attended a hearing prior to this one. The tenant had applied to dispute a notice to end tenancy for similar reasons, dated December 05, 2019. The notice was set aside in a decision dated February 11, 2020 and the landlord applied for a review hearing. The landlord was successful in his application and the review hearing was conducted over 2 sessions on April 24 and June 11th, 2020. In a decision dated June 17, 2020, the Arbitrator confirmed the original decision and the notice to end tenancy was set aside. The file number appears on the first page of this decision.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The background facts are generally undisputed. Both parties agreed that the tenancy began on October 01, 2015. The monthly rent is \$1,066.00 payable on the first of each month. The landlord's property consists of a duplex. Each half of the duplex contains two suites. This tenant occupies the upper suite.

This tenant and the occupant of the lower suite TF have an antagonistic relationship which has led to multiple disagreements and complaints against each other to the landlord. At the previous hearing, the Arbitrator set aside the notice to end tenancy dated December 05, 2019, with a warning to the tenant.

While I am not entirely convinced that the Tenant is solely to blame for the dysfunction within this property, I strongly caution the Tenant that she is on formal notice that any continued, escalated behaviours or actions that are unacceptable or inappropriate may jeopardize her tenancy. (reproduced as written)

The landlord's main complaint is that on February 07, 2020, the tenant installed cameras without his permission and started recording the activities of the lower tenant TF. TF objected to this and on March 14, 2020, the landlord served the tenant with a written warning to remove the cameras by March 20, 2020. The tenant did not comply, and the landlord served the tenant with another written warning on March 20, 2020. The third written warning came on July 21, 2020 and the tenant removed the cameras but reinstalled them inside her home recording the same activity through a windowpane.

The landlord has installed some safety measures and has offered to install professionally monitored cameras. TF agreed but the tenant did not respond to the landlord. As of the date of this hearing the tenant still had the cameras installed inside her suite on the windows so that she could continue to record the activities of the other occupants of the duplex. The landlord received complaints from TF and other occupants too.

The tenant stated that she was within her rights to record activity on public property. She also stated that the landlord's driveway was public property

The other complaints by TF are that the tenant parks her truck close to TF's front door and the fumes enter her suite. In addition, the tenant has placed furniture right in front of TF's window thereby blocking her view. The landlord referred to a term in the addendum that requires the occupants to refrain from placing items within 5 feet of the lower suite. The landlord filed photos of items near the window and the exhaust pipe of the tenant's truck very close to TF's front door.

The landlord stated that the tenant has installed a fire pit on the wooden deck, and it was located close enough to parts of the wooden deck to cause a fire. The landlord did some research and found that fire pits are not permitted on wooden decks. The tenant argued that the fire pit is fueled by propane and could be compared to a propane bar-b-que.

TF also complained of noise disturbances from the tenant's suite which resulted in a loss of quiet enjoyment for TF.

On July 27, 2020, the landlord served the tenant with a one-month notice to end tenancy for cause. The tenant disputed the notice in a timely manner.

. The notice was served for the following reasons;

1. 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

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has jeopardized the health and safety of another occupant or the landlord or has put the landlord's property at significant risk.

Based on all the evidence before me, I find that the landlord provided the tenant with 3 written warnings about the cameras that were recording the activity of the occupant of the lower suite and directed the tenant to remove the cameras. The tenant initially did not comply but after the third warning just moved the cameras indoors and continued to record TF's activities through the windowpane.

During the hearing, I attempted to mediate a compromise between the two parties regarding the installation of the cameras. The landlord agreed to allow the tenant to have a camera recording the backyard activity as the back yard was exclusively for her use but asked the tenant to remove the camera recording activity in the front yard which was for the exclusive use of TF. The tenant refused to agree to do so.

Residential Tenancy Policy Guideline #1 addresses Landlord & Tenant – Responsibility for Residential Premises and states:

SECURITY

1. The tenant must get the landlord's approval, in writing, before installing a security system or alarm.

Based on the above I find that the landlord did not approve the installation of security cameras and the tenant refuses to remove them despite three written warnings.

I further find that the tenant deliberately backs her truck into the driveway so that when it is parked the tail pipe is very close to TF's front door. The tenant has also placed a lawn chair in front of TF's window. A term in the addendum requires occupants to leave a five-foot clearance from the doors and windows of the lower units and the tenant continues to breach this term of the addendum.

During the hearing the tenant argued that having a firepit on the wooden deck was no different from having a propane bar-b-que. The landlord testified that the wooden deck is a small semi enclosed space that is 8x12 foot in size. The landlord filed a copy of the City bylaw that requires a 15-foot clearance of a fire pit from any combustible structure or material.

A fire pit is an open flame and it is possible that it may cause a fire by igniting the wooden deck, wooden walls, wooden roof and the combustible clutter on the deck and posts that surround the deck. The landlord filed photographs of the cluttered deck. On June 16, 2020, the landlord sent a written warning to the tenant to remove the fire pit from the deck.

Since the tenant continued to argue that the fire pit was similar to a bar-b-que, I find that the tenant does not appreciate the danger of using a fire pit in close proximity of combustible structures and does not intend to comply with City bylaws thereby putting the lives of the other occupants of the 4 suites in the duplex and the landlord's property at significant risk.

Finally, I find that despite having received written and verbal warnings and a notice to end tenancy, the tenant did not change her behaviour and the negative interactions with TF continue to take place.

Based on the written submissions and the oral testimony of all parties, I find on a balance of probabilities that the landlord has proven his reasons for wanting the tenancy to end and therefore I uphold the notice to end tenancy for the following reasons:

1. The tenant installed cameras without the permission of the landlord and refused to remove them after 3 written warnings
2. The tenant continues to back her vehicle into the driveway and park it with the exhaust tail pipe just outside TF's front door
3. The tenant continues to place furniture outside TF's window thereby blocking her view
4. The tenant refuses to accept that the fire pit could cause a fire and endanger the lives of all the occupants of the duplex and put the landlord's property at significant risk.
5. In the decision dated June 17, 2020, the tenant was put on formal notice that any actions that are unacceptable or inappropriate may jeopardize her tenancy. Despite the warning the tenant continues engage in behavior that causes TF a loss of quiet enjoyment of the premises.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 and I have upheld the notice to end tenancy. Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy.

Accordingly, I so order. The tenant must be served with the order of possession. 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.

Since the tenant is not successful in her application, she must bear the cost of filing her application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant.

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: September 15, 2020

Residential Tenancy Branch