



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 July 29, 2020 ("One Month Notice").

The Tenant, the Landlord, and an agent for the Landlord, T.P. ("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. During the hearing the Parties were given the opportunity to provide their evidence orally and 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 ("RTB") Rules of Procedure ("Rules"); 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. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

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.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

When a tenant applies to cancel a notice to end a tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2006, with a monthly rent of \$2,500.00, which is currently \$2,873.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,250.00, and no pet damage deposit.

The Tenant submitted a copy of the One Month Notice to the RTB; however, I was unable to open this document on my computer. In the hearing, the Landlord said he had a copy with him, and he said that it was signed and dated July 29, 2020. The Landlord said he served the Tenant with the One Month Notice on July 29, 2020, by delivering it to the rental unit, although the Tenant said she was not staying there at the time. The Tenant confirmed, however, that the rental unit is still her permanent residence. She also confirmed that she picked up the One Month Notice at the rental unit on July 30, 2020. The Landlord said the One Month Notice has the rental unit address, and an effective vacancy date of August 31, 2020. The Landlord said the grounds that he checked on the back of the rental unit were that:

- The Tenant allowed an unreasonable number of occupants in the unit/site;
- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The 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
- The Tenant has assigned or sublet the rental unit without the landlord's written consent.

The Tenant applied to dispute the One Month Notice on August 7, 2020, or eight days after she received this eviction notice.

In the hearing, the Landlord focused on the allegation that the Tenant has allowed an

unreasonable number of occupants in the rental unit without the Landlord's permission, contrary to the terms of the tenancy agreement, the Act, and contrary to verbal warnings.

The Landlord also noted that the Tenant has modified the interior of the rental unit by converting the living room into a bedroom with a locking door added by the Tenant. The Landlord said that the Tenant has turned a 3-bedroom, 2,600 square foot, single family dwelling into a rooming house, as there have been six unrelated people living there at one time.

The Landlord also said that the Tenant has added locks to the bedroom doors, which prevented the Landlord from doing work in the rental unit, because the doors were locked, and he did not have keys to these rooms.

The Landlord said that with so many people living in the residential property, the Landlord's costs have gone up for such things as the water bill, as water is included in the rent. He said with six people flushing toilets and having showers, it gets rather expensive. He also said that his insurance has gone up markedly, because the insurance company considers it more of a rooming house than a residential tenancy. He said the number of occupants brings increased risks to the safety of the occupants and the residential property, and increases the needed maintenance to the rental unit.

The Tenant referenced a written statement in her documentary evidence submitted to the RTB. She also said: "Basically, I want to say that I have over the years had a positive working relationship with [the Landlord], and I wanted to maintain that. I always pay my rent on time. I always respond to anything brought to my attention immediately.

The Tenant also stated:

I mentioned in my letter, I allowed too many people. I shouldn't have allowed [A.] to move in... I should have put a stop to that. When it was all brought to my attention by [the Landlord] in June, I didn't know about the insurance. This is not good; our insurance is exorbitant. I had been planning on moving back to [the rental unit], as I had to move due to personal reasons – a temporary situation. I went to [the Landlord] and asked – 'how can we resolve it?' I had planned on giving people notice that I was coming back. I couldn't ask anyone to leave, because of Covid. That's when [the Landlord] found out that the insurance was going to be crazy. I said as soon as Covid is over I will get people to leave, and I will pay you the extra increase in insurance – see copies of the cheques

submitted to show this. I will admit that I did have too many people there.

The Landlord said:

This goes back as an issue about more than two unrelated adults living there for years. She has six occupants and she was warned about this in 2014. I received a letter from [the local] bylaw officer. I spoke to her that you were warned about it before of having too many people. She said [C.M.] doesn't really count as a tenant, because he's not there all of the time.

Also, the tenants call us directly for repairs – fix the toilet, plugged drains. They don't even tell [the Tenant] about the stuff they have done. They have complained to me directly; I gave up on calling [the Tenant]. I would go over there and deal with it. One of the tenants has small kids. One person smoked a cigarette in front of the kids. It's all this coming and going with six different tenants, constant complaints . . . they said they don't bother calling her.

Neither Parties submitted a copy of their correspondence with the Bylaw Officer, but the Landlord said that the Tenant is aware of that problem. The Landlord said that the local District sent him a letter dated December 6, 2013, about the number of occupants of the residential property. The Landlord said:

My understanding is that she has to have our permission to have ... the lease says that she has to have our permission to have extra occupants. It says that in section 20. This clause in the tenancy agreement states:

20. OCCUPANTS AND INVITED GUESTS

- a) The landlord may not stop the tenant from having guests in the residential premises under reasonable circumstances. If the number of permanent occupants is unreasonable, the landlord may discuss the issue with the tenant and may serve a Notice to End Residential Tenancy. Disputes regarding the notice may be resolved through arbitration under the *Residential Tenancy Act*.

. . .

The Landlord said that he owns the residential property with two other family members. He said: "Our family is adamant that we don't want any extra occupants. That's our family policy."

The Tenant said:

As soon as you told me that this is an issue, I would have acted, but I couldn't because of Covid. I said I would the moment the restrictions were removed. I gave them two months' notice to be respectful of the process for them, so I immediately did that. I wrote [the Landlord] a letter asking: 'I did this, does this work?' I never heard back from them. He said: 'My family has decided no roommates. No not even one roommate.' I talked to RTB, phoned a lawyer. You can't just decide when you have an agreement for so long without me agreeing to that.

The Tenant also commented on a rent increase that she said the Landlord imposed, which the Tenant said was illegal. However, this is not relevant to the issues before me in this hearing; therefore, I did not consider it here.

Analysis

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

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I find that the Tenant is eager to resolve problems in the rental unit, as soon as they arise. She said she has given notice to some of the occupants to leave; however, I find that the problem of too many occupants and unauthorized sublets has been going on since at least 2013 when the local District became involved; and therefore, I find that it is more likely than not that this would become a problem again for the Landlord, once the effect of this hearing and Decision has worn off. As such, I find I agree with the Landlord that there are an unreasonable number of occupants in the rental unit in breach of section 47(1)(c) of the Act and clause 20 of the tenancy agreement.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet his burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act, as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, confirm the One Month Notice, and I award the Landlord with an Order of Possession, effective on September 30, 2020 at 1:00 p.m.

Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to meet his burden of proof in confirming the validity of the One Month Notice. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of August 31, 2020. Therefore, as the effective date of the One Month Notice has passed, I grant the Landlord an Order of Possession **effective September 30, 2020 at 1:00 p.m.**

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: September 21, 2020

Residential Tenancy Branch