



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and the tenant was accompanied by Legal Counsel. The parties each gave affirmed testimony and the landlord called 2 witnesses who also gave affirmed testimony. The parties, or counsel, were given the opportunity to question each other and the witnesses and to give submissions.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated August 30, 2020 was issued in accordance with the *Residential Tenancy Act*, and specifically with respect to the reason for issuing it?
- Has the landlord established that the One Month Notice to End Tenancy for Cause dated September 21, 2020 was issued in accordance with the *Residential Tenancy Act*, and specifically with respect to the service of it and the reason for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 15, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 is payable on the last day of each month, in advance for the following month, and there are no rental arrears. The rent has been increased to \$1,026.00 which becomes effective on November 1, 2020. At the outset of the tenancy the landlord collected a security deposit from the tenant in the

amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the upper floor of a 4-plex, all owned by the landlord, and all are tenanted. The landlord does not reside on the property.

The landlord further testified that on August 30, 2020 the landlord hand-delivered a One Month Notice to End Tenancy for Cause to the tenant, and a copy has been provided for this hearing. It is dated August 30, 2020 and contains an effective date of vacancy of September 29, 2020. The reason for issuing it states: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord."

After serving it, the landlord hoped the tenant would move out, but she didn't, and disputed it so the landlord had to provide an evidence package, and the landlord served the evidence on the tenant by registered mail on September 21, 2020. The evidence included another One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated September 21, 2020 and contains an effective date of vacancy of October 30, 2020 at 12:00 noon. The reason for issuing it states: "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 testified that a vehicle belonging to the tenant's boyfriend was vandalized, and photographs have been provided for this hearing. The windows were broken, tires slashed and someone poured gasoline inside. The tenant couldn't explain what happened, but the tenant's boyfriend accused the landlord indirectly as well as the landlord's staff which has been upsetting for everyone in the complex. The tenant's boyfriend is not a tenant, and has made untruthful statements, but the tenant is not willing to accept responsibility for her boyfriend, a guest, and because the boyfriend is obviously targeted, the tenant should move out or move her boyfriend out.

Numerous text messages have been provided for this hearing, as well as written submissions of the landlord, and letters addressed to the tenant. The first is dated February 03, 2020 and asks the tenant's immediate attention to removing dog feces from the property. Another is dated August 13, 2020 asking that the tenant remove the accumulation of unsightly garbage around the exterior of the rental unit, and states that in view of recent vandalism to vehicles, the tenant is asked to secure storage elsewhere for her vehicle.

The landlord's first witness (AM) testified that he is an Anglican Priest, and also does some carpentry work and home maintenance, but is not certified in that regard. Now and then the witness is asked by the landlord to do some jobs, and the landlord pays the witness for his services.

The witness was in the rental unit and made some repairs to doors, and saw mold in the bathroom, and told the tenant that it was due to moisture in the bathroom. The witness thought it just needed more regular house cleaning. A photograph has been provided by the landlord which the witness testified is a picture of the window that had been pointed out to him at that time.

The landlord's second witness (JF) testified that he resides about 2 or 3 minutes walk from the rental unit. He used to help the landlord with chores, however had had heart surgery.

The witness was accused of running from a car that had been vandalized, but the witness cannot run. A police officer called the witness and told him that the tenant's boyfriend accused the witness of being a well-known drug addict and that the witness was seen running from the vehicle with another person, but the witness advised the officer that he was in a different city at the time. The witness feels somewhat intimidated by the tenant's boyfriend, and is very stressed, even today.

The tenant testified that at the beginning of June, 2020 the landlord gave the tenant permission for her boyfriend to park near the rental unit. Vandalism has been subjected to it since then, but the tenant does not know who has caused it. The car belonging to the tenant's boyfriend was vandalized on July 29, 2020; windows were knocked out and gasoline was poured inside. ICBC was dealing with getting it towed, which happened 2 days later, and police have made a file. The vehicle was removed, and the tenant testified that there have never been uninsured or unregistered vehicles of the tenant on the rental property. Also, the air was let out of the tires 3 times, but the landlord has not brought up vandalism issues to the tenant since August 13, 2020.

Analysis

Firstly, given that the landlord issued a second One Month Notice to End the Tenancy for Cause, I find that the service of it is not contemplated by the *Act*. The tenant was served with it along with evidence for the dispute hearing regarding the first One Month Notice to End Tenancy for Cause. Therefore, I am satisfied that the dispute filed by the tenant should include disputing both notices.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

I have reviewed all of the evidentiary material, and I am not satisfied that the landlord has established that the tenant's boyfriend is a "target" for vandalism. I find that it is simply an

allegation that has not been proven. Further, I have read the Written Submissions of the tenant, which includes excerpts of past Decisions posted on the Residential Tenancy Branch website, and particularly: "...the Landlord must demonstrate that the Tenant, in each case, was either the instigator or aggressor and entirely at fault for her conduct, as opposed to the existence of mutual antagonism between the Landlord and Tenant."

In this case, the landlord must demonstrate that the tenant or guest was the instigator and at fault for the conduct or events. The landlord has not demonstrated that, and therefore, I cancel the One Month Notice to End Tenancy for Cause.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it by filing it as a judgment for enforcement in the Provincial Court of British Columbia, Small Claims division.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated August 30, 2020 is hereby cancelled.

The One Month Notice to End Tenancy for Cause dated September 21, 2020 is hereby cancelled, and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: October 21, 2020

Residential Tenancy Branch