



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- more time to make an application to cancel the Notice pursuant to section 66.

The tenant attended the hearing. She was assisted by her mother ("**JC**"). The landlord was represented at the hearing by its property manager ("**SS**") and a board member ("**JB**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

JC testified that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. SS confirmed this but noted that the tenant did so outside the time limits proscribed by the Act. Nonetheless, SS stated that she had no objection to tenant's documentary evidence being admitted into the evidentiary record. SS testified, and JC confirmed, that the landlord served the tenant with their evidence package. I deem that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – More Time

At the outset of the hearing, JC confirmed that the Notice was served on the tenant on September 18, 2020. The tenant filed her application to dispute the Notice on September 20, 2020, two days after having been served with it. Section 47(4) of the Act allows a tenant 10 days from being served to dispute one-month notices to end tenancy. The tenant disputed hers within 10 days. Therefore, she does not require an extension of time. Accordingly, I dismiss this portion of the tenant's application.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting February 8, 2020. Monthly rent is subsidized. The market rent is \$765, of which the tenant pays \$289. The tenant paid the landlord a security deposit of \$379, which the landlord continues to hold in trust for the tenant. The landlord provides subsidized housing. It is not a supportive housing organization and does not provide an support services (such as social, medical, or mental health services) to tenants.

On September 18, 2020, the landlord's agent personally served the tenant with the Notice, which specified an effective date of October 17, 2020.

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - has put the landlord's property at significant risk; and
- 2) 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; and
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; and
- 3) tenant has not done required repairs of damage to the unit/site.

SS testified that the tenant has been a constant source of disturbance in the residential property since she moved in. SS provided a written statement in her evidence package where she wrote:

Since the moment she moved in I have had problems with [the tenant], such as:

- Screaming from her balcony, sometimes screaming obscenities
- Throwing furniture and clothing down her stairway into the courtyard
- Throwing her bike out her doorway into the courtyard.
- Leaving her garbage outside
- Leaving her furniture that she discards in a disabled parking space, which rendered it unusable
- Knocking on other tenants' doors at all hours asking for food, cigarettes, candles etc.
- Calling my emergency on-call person for no reason: such as, she had no bottled water, no heat in July, the [landlord] is not supplying food and blankets
- Many tenants have called me at all hours due to her playing loud music and screaming. Or banging things on walls or floors.
- She had damaged most of the walls in the unit, damaged and or broken all bifold closet doors, damaged cupboard door and drawer doors (see pictures)

- She had damaged the thermostat which has not been replaced
- She has removed the smoke alarm and the CO2 alarm. I am not sure if these have been replaced
- She has called many times for a maintenance person to come fix or light her furnace or water tank after she has turned them off. She has also called the emergency on-call person because she had no power, only because she turned off the main breaker.
- She had repeatedly broken blinds and after putting the second set into her unit I have told her I will only replace them now if she pays for them. There is a rule at [the residential property] that tenants are not to put up curtains. I did give her permission due to not replacing any more blinds.
- She was feeding the crows from her balcony causing these birds to congregate on the balcony and our garage creating a large mess for us to clean up.
- She was also feeding stray cats leaving the food outside for days. This in our area is a very much a bear attractant.
- I do not have physical proof, but I know [the tenant] is smoking in her unit.

The landlord submitted written statement from five occupants of the residential property which corroborate the SS's statement. One occupant wrote:

I have seen and heard her yelling and screaming at all hours of the day and night. She has incredibly loud music playing, also at all hours of the day and night. When she is yelling and screaming the majority of it is profanities and the children have been outside witnessing. Some of the children in the complex that have seen and heard this are as young as two years old
[...]

Almost daily you can hear the screaming banging, loud music at all hours of the day and night. There was one night she was knocking on my door at midnight to ask me to call her mom because she left her phone in her mom's car.

A second occupant wrote:

Since [the tenant] has moved in (Feb 2020) she has:

- Knocked on my door almost weekly begging for food or to tell me various things (she is head of secret military, she has advocated for the roof or her ex-boyfriend is living in the roof)
[...]
- Screams, plays love music and throws things down her stairs at all hours of the day and night.

A third occupant wrote that the tenant would bang on the walls between their units when she goes upstairs after 11 PM which causes the occupant to wake up during the night.

This occupant characterized the sound of the tenant banging on the walls as if the tenant “is going to come right through [into] my place”.

A fourth occupant indicated that the tenant plays loud music at all hours, screams at no one, and knocks on her door at least weekly to:

- ask for cigarettes
- buy her crocheted items
- ask to trade clothing
- tell me the ground is moving,
- tell her that she sees drones.

This occupant wrote that the tenant scares her children often with her erratic behavior which includes “screaming, swearing, pacing, yelling, crying etc.”

The tenant did not deny that she acted as alleged by the landlord and the other occupants. However, she did indicate that her father had attended the rental unit and repaired the damage she caused to the rental unit. She provided photographs of the repaired damaged.

Rather than deny the allegations, the tenant and her mother attempted to explain them. The tenant’s mother testified that the tenant is in recovery and has been clean for several months. She testified that the tenant moved back from the Vancouver Downtown Eastside in October 2019.

The tenant’s mother indicated that the tenant has mental issues and occasionally has psychotic episodes. The tenant and her mother attributed the tenant’s erratic behavior to the tenant being unable to obtain the appropriate medication to deal with her mental issues.

The tenant’s mother indicated that the tenant moved in with her and her husband on a temporary basis due to the COVID-19 pandemic and spent much of the summer with them. She still maintains the rental unit as her residence however and the tenant wants to continue to live there.

The tenant’s mother indicated that since receiving the Notice, the tenant has changed medications and she has not had a psychotic episode in “the last month and a half or two months”. She said that since the Notice are issued “things are good” with the tenant’s mental state.

However, the tenant’s mother also noted that the morning of the hearing the tenant had shown signs of beginning to have a psychotic episode, but it was taken care of by the mother giving the tenant her new medication.

SS admitted that since the Notice has been issued the tenant has not disturbed her neighbors. However, SS observed that the tenant has been staying with her mother for

some of this time and noted that the tenant may have had a psychotic episode this morning had her mother not been there to administer the new medication.

SS worried that if the tenant was allowed to remain in the rental unit her mother would not be present to administer the medication when required, and that the tenant's episode would continue, and she would resume her pattern of disturbing the other occupants.

The tenant submitted two letters from healthcare professionals into evidence. The first, dated September 18, 2020, characterized the tenant as "struggling with her mental health issues and is in need of support regarding her accommodation." He noted that the tenant "has been quite stable most recently".

In the second letter, dated October 20, 2020, the tenant's family physician wrote that the "despite some recurring struggles with mental health and substance abuse, [the tenant] has shown growth and resilience, a strong desire to help others and care for our community. She is currently connected with many local supports, including family, psychiatric care through our local mental health nurse and visiting psychiatrist, social determinants advocacy with our local social worker, and counseling."

The tenants mother testified that if the tenancy were to end, she would take her daughter in, but strongly stated that this was not a course of action she wanted to follow, as it would likely cause irreparable damage to her marriage. However, the tenant's mother said that she could not turn her back on her daughter.

Analysis

Section 47 states:

Landlord's notice: cause

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

[...]

(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,

Without a doubt, the conduct of the tenant rises to the level of "unreasonable disturbance". It is not reasonable to yell and scream at all hours of the day or night, repeatedly use profane language in front of children, pound on the walls of the rental unit in the middle of the night, or repeatedly knock on other occupants doors, especially at midnight, without a reasonable justification. In this respect, the landlord's application is very straightforward. The tenant has unreasonably disturbed other occupants. The Notice is valid. The tenancy must end.

However, the tenant does not dispute that she has acted as alleged. Rather, she takes the position that such disturbances will not happen again, and, in effect, asks for another chance.

She has provided evidence as to the progress she has made and provided evidence as to how an eviction would negatively affect her and her family.

I do not doubt the tenant and her mother's testimony that the tenant has made great improvements in her life since she returned from the Vancouver Downtown Eastside. I have no reason to disbelieve that she is clean and that she is receiving medical treatment for her addictions and mental health. I commend the tenant for this. However, these accomplishments, while laudable, do not form a basis by which I am empowered to cancel the Notice.

The Act does not provide an arbitrator with any mechanism by which they can award a "second chance" to a tenant. Similarly, the Act does not empower an arbitrator to take into consideration the effect of an eviction would have on a tenant or the tenant's family.

Rather, the Act functions mechanically.

Section 55 states:

Order of possession for the landlord

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.

[emphasis added]

It only allows an arbitrator to assess the validity of a Notice (that is, determine if the events the landlord alleges occurred actually happened, and, if they did, that they meet the standard for an eviction). In this case, I have found that the Notice is valid. If the Notice is valid, the arbitrator *must* grant the landlord an order of possession.

As I have found that the Notice is valid, I am required to issue to the landlord an order of possession. At the hearing, SS stated that the landlord is agreeable to have the order of possession be effective December 31, 2020. Accordingly, I order that the tenant deliver vacant possession of the rental unit to the landlord by December 31, 2020 at 1:00 pm.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by December 31, 2020 at 1:00 pm.

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: December 3, 2020

Residential Tenancy Branch