



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was primarily represented by an advocate. The corporate landlord was represented by its agent.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The tenant has been housed by the corporate landlord for a number of years. This tenancy began in August, 2020 when the tenant was relocated from a previous building where they were over housed. The rental unit is a suite in a 31-unit complex.

The landlord issued a 1 Month Notice dated April 26, 2021 indicating the reason for the tenancy to end is that the 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;

The landlord submits that the tenant is a hoarder who brings in large amount of clutter, debris and salvaged items into the rental property and unit. There have been a number of complaints by the other occupants of the suite regarding the tenant storing items in the common area hallways, introducing bed bugs and cockroaches into the building and causing excessive noise. The landlord submits that the tenant's guest has repeatedly come and gone from the rental property, has at times thrown stones at the window of the rental unit to alert the tenant of their presence and have disturbed the other occupants of the building.

The landlord submitted complaint letters from other occupants into documentary evidence. The landlord's witness is one of the other occupants of the building who complained about the tenant bringing materials onto the property and testified that they saw cockroaches and pests in the items brought by the tenant and their guest. They said that the tenant and their guest often leave the items in the common areas for days and weeks.

The landlord submits that numerous tenants have complained about the tenant and have initiated a petition to have the tenant removed from the rental property. A copy of the petition signed by six individuals was submitted into evidence. The petition reads in part:

[The Tenant] has put our health and wellbeing at risk due to the large amount of waste and junk that is continuously brought onto the property by him and his guests. Much of the items that are brought onto the property have been seen to have pests on them and result in pests being brought into common areas and spread throughout the building.

The landlord submitted into documentary evidence correspondence issued to the tenant during the present tenancy and at their previous residences discussing the need to maintain their unit in a reasonable state and identifying progress made in cleaning certain areas of their suite. The landlord submits that despite past efforts working with the tenant and hoping for improvement the tenant and their guest's conduct has led to the issuance of the present 1 Month Notice.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that there has been significant interference or unreasonable disturbance or that there has been serious jeopardy to the health, safety or lawful rights of others.

Based on the entirety of the evidence before me I am not satisfied that the landlord has met their evidentiary onus. While I accept that there have been instances where the tenant or their guest has kept some items in the common area hallways and parking areas, I find insufficient evidence that this is anything more than a temporary situation. In any event I find, based on the floorplan of the property and photographs of the storage provided by the landlord, that these instances cannot reasonably be characterized as interference as the passageways appear traversable and the disruption is minimal.

I find insufficient evidence that there are pests in the rental unit or that the tenant is responsible for their presence. I find the testimony of the landlord's witness to be

insufficient to meet the evidentiary onus that there are pests due to the conduct of the tenant. If there was an infestation as claimed it would be reasonable to expect the landlord would have some further evidence such as a report from a third-party pest control organization. I find that the presence of some pests visually seen inside a building is simply an unpleasant but unescapable aspect of life. I am not satisfied based on the evidence that the tenant or their guest is responsible for the presence of pests or that they pose a serious jeopardy to health or safety.

I find the noise complaints by the other occupants to be insufficient to be considered an unreasonable disturbance or interference. The few written complaints appear to be for isolated incidents with many of the occurrences cited at reasonable hours of the evening. I find the presence of some sound from neighboring units to be an aspect of living in a rental building with other tenancies. I find the complaints in the documentary evidence submitted by the landlord to be insufficient to establish that the level, frequency or occurrence of the noise are so severe as to be unreasonable or significant.

Similarly, I find little evidence to support the landlord's testimony that the tenant's guest has caused significant damage to the rental unit or unreasonable disturbance through their attendance at the rental unit or occasionally throwing stones on the rental unit window to alert the tenant of their presence. While the tenant would be well advised to instruct their guests to contact them through a working phone, intercom or other means rather than throwing items at the rental unit window, I do not find that these incidents are sufficient to give rise to a basis to end the tenancy.

The landlord gave some testimony regarding interactions between the tenant and others characterized as physical assaults and fights but I find little documentary evidence of such incidents. It would be reasonable to expect that a physical altercation would be documented by the landlord or the other participant. The landlord provided no details of these incidents, giving no dates, locations or participants of such interactions. I find insufficient evidence to support the landlord's submission that there have been physical fights between the tenant and any other occupant.

I find the submissions of the tenant's advocate to be generally irrelevant to the matter at hand and of no consequence to determining the issues before me. Their suggestion that the tenant is a target of a "witch hunt" and prejudice from the landlord or their suggestions that the complaints of other occupants may be fabricated by the landlord is not supported in the documentary materials and have little air of reality.

The evidentiary onus lies with the landlord to establish on a balance of probabilities that there is a basis for the tenancy to end as noted on the Notice. Based on the totality of the materials I find that the landlord has not met their onus. I find insufficient evidence that the conduct of the tenant or their guest allowed on the property has caused significantly interference or unreasonable disturbance of others or that there has been a serious jeopardy to the health, safety or lawful rights of others.

Consequently, I allow the tenant's application and cancel the 1 Month Notice of April 26, 2021. This tenancy continues until ended in accordance with the Act.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. The notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

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 2, 2021

Residential Tenancy Branch