



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Welbec Quesnel Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, a support person for her, and the landlord's agent.

Neither party raised any issues related to service. The tenant did submit that she had intended to serve the landlord and Residential Tenancy Branch with some evidence but she could not get it done prior to the hearing.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on April 1, 2019 for a month to month tenancy beginning on April 1, 2019 for a monthly rent of \$650.00 due on the first of each month with a security deposit of \$325.00 and a pet damage deposit of \$300.00 paid.

The landlord also submitted a copy of a One Month Notice to End Tenancy for Cause issued on August 20, 2021 with an effective vacancy date of September 30, 2021 citing the tenant has allowed an unreasonable number of occupants in the unit; 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, and put the landlord's property at significant risk; and the tenant or a person permitted on the property by the tenant has engaged in illegal activity that as or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and adversely jeopardize a lawful right or interest of another occupant or the landlord.

In the Details of the Event(s) section of the Notice to End Tenancy, the landlord wrote:

“Extreme amount of traffic. People yelling in back yard to your balcony. In and out of people at times with only two minutes in between, Disturbing others quiet at all hours of the night.”

The landlord testified the tenant has people coming and going from her rental unit at all hours of the day and night and that these people are disturbing other occupants of the residential property.

The landlord submitted that she believes, based on the appearance and behaviour of a number of the tenant's guests that they were under the influence of drugs and/or alcohol. She also submitted that when she approaches them to find out who they are and who they are visiting they respond aggressively, and she fears for her safety.

The landlord testified that she has installed surveillance cameras and moves them around from time to time. In support of her position that the tenant has numerous guests at different hours she has provided several pages of still images taken from her surveillance cameras showing multiple visitors to the tenant's rental unit.

She also stated that many of the tenant's guests communicate with her by yelling up from the yard between her unit and the neighbouring property. She also submitted that the tenant's guests will cause the locked doors to be left ajar and not close properly to allow other people to come and go from the building.

The landlord submitted that she has had numerous complaints from residents in the property of being disturbed by the tenant's guests comings and goings but that none of the other residents would provide any evidence for this proceeding as they are concerned about retaliation from the tenant.

The landlord provided that the cause of unreasonable number of occupants is based on the number of people the tenant has visiting her.

The tenant submitted that she does have a large number of people visiting her and that they do come at various times. She stated that she has disabilities that restrict her ability to leave her unit and as such she has a lot of people coming to help her with various daily living activities. She stated that she does not follow any specific sleep pattern due to her disabilities and as such some people do come at different hours. The tenant also stated that sometimes her guests are there for a visit and/or coffee and they don't always stay too long.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) 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;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, that rent is payable under the tenancy agreement.

Section 47(4) allows a tenant to dispute a notice under Section 47 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. The tenant submitted, in her Application for Dispute Resolution that she received the One Month Notice on September 1, 2021. As such, I find the tenant had until September 11, 2021 to submit an Application for Dispute Resolution seeking to cancel the One Month Notice. The tenants' Application was submitted on September 2, 2021. I find the tenant submitted her Application within the required timeframe for consideration.

Residential Tenancy Policy Guideline 13 states that if a tenant allows a person to move into the rental unit, the new person is an occupant who has not rights or obligations

under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant.

As such, in order to end the tenancy for cause relating to allowing an unreasonable number of occupants a landlord must provide evidence to establish the tenant has allowed more people to move into the rental unit that it would be reasonable to have living in the unit based on the unit size.

The landlord has provided no such evidence that the tenant has allowed anyone at all to move in. As per the landlord's testimony, she relies on this cause in relation to the tenant's multiple guests attending the tenant's rental unit. As this is not the intention of this section of the *Act* and there is no evidence of additional occupants living in the rental unit, I find the landlord cannot end the tenancy for the tenant having an unreasonable number of occupants.

In relation to the landlord's 3 identified causes to end the tenancy that stipulate that the tenant or her guests having in 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 of the landlord and adversely jeopardize a lawful right or interest of another occupant or the landlord, I find the landlord has only presented her suspicions that the tenant's guests were intoxicated but has provided no substantive proof of any illegal activity.

As such, I find the landlord has failed to establish any illegal activity that the tenant or her guests were engaged in. Therefore, I find the landlord cannot rely on these causes to end the tenancy.

Finally, in regard to the landlord's assertions that the tenant's guess have significantly interfered with or unreasonably disturbed other occupants or the landlord; seriously jeopardized the health safety or lawful right of another occupant or put the landlord's property at significant risk I make the following findings.

I find there is insufficient evidence of a significant risk to the landlord's property by the actions of a multitude of people accessing the property improperly. In addition, and by the landlord's own testimony there are other residents in the building who allow this to happen. As such, I find the landlord cannot attribute all of these claims to this tenant.

While I acknowledge that the landlord has had some difficult interactions with people coming into the property who are not tenants and that these people may have been aggressive to her, I find she has failed to provide sufficient evidence that there has been significant interference or disturbances to other occupants, as the landlord has not provided any evidence from other residents.

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to

provide sufficient evidence over and above their testimony to establish their claim. While the landlord has provided substantial evidence that the tenant has a large number of guests, I find she has failed to provide sufficient evidence to corroborate her claim that the tenant's guests are causing any significant disturbances or jeopardizing the health, safety, or lawful rights of other occupants or the landlord.

For these reasons, I find the landlord has failed to establish cause to end the tenancy under Section 47 of the *Act*. However, I caution the tenant that this notice to end tenancy should be considered a warning that the behaviour of some or all of her guests may contribute to the landlord seeking and being able to end this tenancy in the future.

Conclusion

Based on the above, I cancel the One Month Notice to End Tenancy for Cause issued by the landlord on August 30, 2021 and the tenancy shall remain in full force and effect 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: January 13, 2022

Residential Tenancy Branch