



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 in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”). The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on June 1, 2010. Rent of \$600.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit. On September 28, 2021, the Landlord gave the Tenant a one month notice to end tenancy for cause dated September 28, 2021 (the “Notice”) by posting the Notice on the door. The Notice sets out that the tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another tenant or the landlord. The Notice includes details setting out dates of incidents.

The Landlord states that on September 21, 2021, a guest of the Tenant threw rocks on the ground below the unit. The Landlord states that the Tenant was given notice about this incident and told to clean the area. The Landlord states that the Tenant only did some cleaning. The Landlord states that no tenants complained about this incident. The Tenant submits in its application in relation to the rock throwing incident that the Tenant had texted the Landlord "in a panic as I knew the guest was out of control.

The Landlord states that on September 23, 2021, two tenants called or texted the Landlord to complain about noise and fighting after 10:00 p.m. coming from the Tenant's unit. The Landlord believes that the disturbance lasted about an hour. On September 24, 2021, the Landlord was again notified by a tenant of the guest banging, kicking and screaming at the Tenant's door and of finding excrement on the walkway. Two tenants complained to the Landlord about this disturbance. The Landlord states that the police were called however the Landlord is not aware of the outcome. The Landlord states that there have been no further disturbances by the guest however the Tenant has since sent what the Landlord describes as threatening texts. These texts were sent January 31, 2022, and the Landlord provided them as evidence. The Landlord states that at 4:19 am on the morning of the hearing the Tenant sent more texts indicating that the Tenant had just picked up the Landlord's evidence package and directing expletives towards the Landlord. The Tenant used phrases such as "you are a weak man". "you will be held accountable" and "don't ever f--- with me again". The Landlord states that the Landlord felt threatened by the texts and is considering reporting the matter to the police. The Landlord seeks an order of possession effective March 31, 2022.

The Tenant states that for both the noise incidents the Tenant called the police as the Tenant's guest was being irrational and the Tenant had no control over the guest's behavior. The Tenant states that the guest was charged with assault and is currently under a restraining order. The guest has not been to the unit since the last incident. The Tenant states that the situation has been very stressful causing the Tenant to be

anxious. The Tenant states that the morning of the texts the Tenant could not sleep and that the Tenant was justifiably angry. The Tenant states that the noise incidents were not foreseeable and were not caused by the Tenant.

Analysis

Section 41(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. There is no evidence that the rocks being thrown caused any interference with anybody and while this would be a disturbance, the one incident, in itself, cannot be seen as an unreasonable disturbance. It is undisputed that the next two incidents were again caused by the guest's behavior who was subsequently charged and that the incidents have not since been repeated. However, the undisputed evidence is that the Tenant is angry about the Landlord's actions to evict, feels justified about the anger and has used words that threatened the Landlord. This indicates that the Tenant takes no responsibility for having this guest in the unit, particularly after the first incident of rock throwing when the Tenant knew this guest was out of control and still permitted the guest onto the property leading to the next two incidents. This does not support the Tenant's evidence that the subsequent disturbances were not foreseeable. Further, given the Landlord's evidence of the tenants who complained I consider that the next two incidents were highly disturbing to these tenants. For these reasons and given the undisputed evidence of subsequent threats towards the Landlord that I consider to be evidence of the Tenant escalating matters, I find that the Landlord has substantiated that the Tenant and the Tenant's guest have unreasonably disturbed other tenants and the Landlord. I dismiss the Tenant's claim to cancel the Notice and in effect the Tenant's application is dismissed.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's

application is dismissed or the landlord's notice is upheld. As the Notice complies in form and content and as the Tenant's application has been dismissed, I find that the Landlord is entitled to an order of possession as requested.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on March 31, 2022. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 22, 2022

Residential Tenancy Branch