



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIAN CENTENIAL HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on October 4, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the Notice);
- More time to file this application.

Both parties attended the hearing and provided affirmed testimony. All parties were given a full opportunity to be heard, to present evidence and to make submissions.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding. However, the Tenant did not submit and serve her evidence prior to this hearing. As the Tenant did not serve her evidence in accordance with the Rules, I find it is not admissible. The Tenant confirmed receipt of the Landlord's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note the Tenant applied for more time to file this application. However, since she filed the application to cancel the Notice within 10 days of receipt of it, I find this was filed in time. As such, the Tenant's application for this ground is not necessary, and is dismissed.

Issue(s) to be Decided

- Is the tenant entitled to have the Notice cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The Landlord issued the Notice for the following reasons:

Tenant has allowed an unreasonable number of occupants in the unit/site.

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.*
- *put the Landlord's property at significant risk.*

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The “details of cause” section of the Notice indicate the Notice was issued for the following reasons:

Details of the Event(s):
Since October 2019, this tenant has been served with a minimum of 8 Sections breaching her Tenancy Agreement. The most recent are:
#10 Guests: August 19, 2021, March 11, 2022. Reported that an unregistered adult male(s) has been living in unit in excess of 14 days.
#15 Hazards: November 5, 2021, Tenant issued warning and breach notice regarding the articles being stored in the Carport as it is a fire hazard.
#17 Locks: March 8, 2022, Breach issued - tenant replaced locks with her own locks - Landlord unable to gain access
#18 Use of premises: August 18, 2021, November 12, 2021, January 12, 2022, Breach issued - Adult male appears to be conducting trade or business in the carport
#20 Common Areas: July 20, 2021, April 4, 2022, Breach issued. Tenant has vehicles blocking the roadway, as many as 2 vehicles parked in the carport area - pictures have been supplied as validation. (Emergency vehicles and other tenants unable to access their parking spots)
#23 Conduct: April 27, 2022, Breach issued - An adult male interfered (confrontational) and prevented the Tow Truck from removing unregistered car from the property.
#8 Basis of Tenancy and #9 Declaration: ongoing since October 2019 – Son was placed in care of Ministry – was to be returned to her December 2021. March 8, 2022 - Breach issued – At time of required Maintenance inspection it was indicated that her son was not living at residence

The Tenant acknowledged receiving the Notice on or around May 16, 2022. The Landlord explained that they have, in the past couple of years, issued at least 2 different 2 Month Notices to End Tenancy because the Tenant no longer qualifies for her subsidized rental unit. However, the Landlord did not follow up with those and file for an Order of Possession. The Landlords instead chose to issue this Notice for cause for the above noted reasons.

During the hearing, the Landlord was asked to explain why the Notice was issued. The Landlord focused on the issue regarding the fact that the Tenant had her child taken away by the Government a few years ago, making it so she no longer qualifies for the subsidized rental unit she is in. The Landlord explained that since October 2019, the Landlord has been requesting for the Tenant to supply confirmation regarding the custody of her son. However, the Tenant has failed to provide any formal documentation, which is a requirement of her tenancy.

The Landlord went on to state that they have issued several breach letters because the Tenant changed the locks. The Landlord also stated they issued a breach letter because the Tenant has adult males living in the rental unit for more than 14 days at a time. The Landlord further explained that other breach letters were issued for her use of the common areas, particularly her carport and parking area where there is a large amount of junk.

The Landlord further stated that they have made several visits to the unit to check on the unit, and on one occasion, their maintenance worker was “assaulted” by one of the Tenant’s guests. When asked what this meant, the Landlord further explained that the maintenance worker was “verbally confronted” when one of the Tenant’s vehicles was being towed. The Landlord did not recall what was actually said. The Landlord did not specifically refer to any of her evidence in the hearing.

As part of the Landlord’s evidence, photos of the carport area were provided, but they are undated. A copy of the a warning letter, issued March 15, 2022, was provided showing that the landlord found that an unapproved exterior doorknob and key lock was installed on the door, and that it was a breach of a material term of section 17 of the tenancy agreement (Tenant must not change locks). A copy of the tenancy agreement was provided into evidence, and term 17 is unrelated to locks. Section 24 of the tenancy agreement refers to locks and access, but it does not stipulate that it is a material term of the tenancy agreement. The letter from March 15, 2022, goes on to say that failure to return the locks to the way they were may result in a Notice to End Tenancy.

The Landlords provided copies of correspondence, letters and emails showing that the Tenant's son was taken away and that he was supposed to be returned in 2021. This process was delayed, and it was not until 2022 that the Tenant had her son back in her custody, although the Landlord is still waiting on formal documentation for this.

The Landlord also provided a copy of a "breach letter", dated August 19, 2021, taking issue with the following breaches of the tenancy agreement:

Section 15: Hazards: Adult male observed by our staff, grinding inside carport with flammable materials close by. I have included several pictures of the clutter in your carport.

Section 18: Use of premises: Adult male appears to be conducting trade or business in your carport

Section 19: Alterations: Adult male observed repairing and/or servicing vehicle/s in your carport

Section 23: Conduct: complaints from neighbors regarding the ongoing noise from your carport

Section 31: Rules & Regulations: You have failed to comply with multiple Sections of your Tenancy Agreement

This breach letter also notes that the Tenant will be issued a 1 Month Notice to End Tenancy for Cause if the breaches continue past August 30, 2021.

The Tenant stated that she has not had anyone move into the rental unit, despite what the Landlord alleges regarding her "guests". The Tenant stated she has both male and female guests over but they don't live with her. The Tenant acknowledged that her child was taken from her about 3 years ago and that she suffers from serious PTSD and anxiety over several issues.

The Tenant stated that her child has since been returned to her, as of March of 2022, but she has had difficulties preparing and submitting documents to prove this. The Tenant also notes that she has a hobby that involves working with scrap metal and vehicles, and she does some of this work in her carport, but she denies there is any risk or hazard. The Tenant stated she has since cleaned up the area a fair bit.

The Tenant also pointed out that she added an additional doorknob lock to her exterior entrance door which uses the same key as her deadbolt that has always been there. The Tenant stated that since the lock she put on the doorknob uses the same key as the deadbolt lock the Landlord put in, then it is not preventing the Landlord from accessing the rental unit.

The Tenant stated with respect to her use of the common areas, she is not doing anything against her tenancy agreement. The Tenant pointed out that she has seen many other people from the complex use the common areas for metal work, including many of the "noisy" hobbies and activities the Landlord is claiming she has done. The Tenant stated she has seen others using welders in the common areas and asserts that

the Landlord may be confusing her activity in the area with others. The Tenant also denies ever blocking access to the premises.

The Tenant acknowledged that regarding the issue about “conduct” noted on the Notice, her male friend went out to confront the tow truck driver because her one of her two licenced vehicles were being towed, without justification. The Tenant stated that her male friend went out when he saw the tow truck driver and said “ what the F*** do you think you’re doing?”. The Tenant stated it was not an assault as the Landlord alleges and was to try to stop the Tenant’s vehicle from being towed from the common area.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*.

I have reviewed the testimony and evidence on this matter. I note the Landlord identified several issues on the Notice. However, during the hearing, the Landlord only loosely referred to many of the incidents and did not specifically present or point to any of the documentary evidence to substantiate what is on the Notice.

I turn to the items laid out in the “details of cause” section of the Notice. I note the Landlord stated that the Tenant has a male living at her residence. However, I find there is insufficient evidence to support that there is an additional person residing in the unit. The Tenant denies that anyone but her son is living with her. Next, I note the Landlord asserts there is a fire hazard due to the way in which the Tenant uses the carport for storage. However, the Landlord did not sufficiently elaborate on this matter. There are a few undated photos, but it has not been made sufficiently clear how the Tenants storage poses a fire hazard. Regarding the locks, I note the Landlord stated the Tenant replaced locks with her own locks. However, the Tenant stated she only installed a doorknob lock, using the same key as was used in the original deadbolt lock on the door. The Landlord did not respond to this point raised by the Tenant or deny that it was the same key. I am not satisfied that there is sufficient evidence showing the locks have been changed, and that it is preventing access to the rental unit.

The next issue on the Notice was regarding “use of premises” and the Landlord noted that there is an adult male that “appears” to be conducting trade or business in the

carport. However, the Landlord did not explain what their basis was to believe that trade or business was being conducted, and how it was in breach of the tenancy agreement. The Tenant asserts that one of her hobbies is metalwork and auto repair and she feels she should be able to perform these activities. Ultimately, I am not satisfied the Landlord has sufficiently demonstrated that the Tenant breached clause 18 of the Tenancy Agreement for “use of premises”.

With respect to the Tenant’s use of “common areas” (#20), I found the Landlord’s explanation of this matter was vague and unclear as to how it warrants and supports any of the grounds on the Notice. On the Notice itself, the Landlord pointed out that they issued the Tenant breach letters for parking vehicles in the laneway, which restricted access. However, the Landlord did not articulate the specifics of this matter, nor did they explain when the photos of the parking issue were taken. Again, the Landlord did not sufficiently explain or articulate how this issue warrants an end to the tenancy under any of the grounds selected.

With respect to the issue regarding the “conduct” of the Tenant’s guest when her car was being towed, I found the Landlord’s explanation of this issue was vague and unclear. I note the Landlord initially asserted the Tenant’s guest “assaulted” the individual trying to tow the Tenant’s car. However, the Landlord subsequently stated she doesn’t recall what was said. The Tenant acknowledged that her guest went out to ask what the tow truck driver was doing at the time. However, without further evidence showing what occurred (supporting an allegation of assault), I am not satisfied this situation warrants an end to the tenancy under any of the above noted grounds.

Lastly, under the “details of cause”, the Landlord noted that the Tenant, since October 2019, has been in breach of terms #8 and #9 of the tenancy agreement because her son was taken away from her. Under the “details of cause” the Landlord noted that a “breach” letter was issued on March 8, 2022. However, I note that a copy of this breach letter was not provided into evidence. I note the Tenant acknowledged that her son was taken away for a couple of years. I also note that the Tenant is in a subsidized rental unit, and that the whereabouts of her son, and whether she is his legal guardian, has a significant impact on the Tenant’s potential qualification for the unit she is living in. I accept that this would be a topic the Landlord would need to investigate and understand. However, without a copy of the breach letter, I find the Landlord has not provided sufficient evidence to substantiate that an end to the tenancy is warranted, either for breach of a material term, or another ground.

Ultimately, I found the Landlord's explanation and presentation of the evidence and the issues behind the Notice lacked organization, clarity, and detail. As a result, I find there is insufficient cause to end the tenancy under this Notice.

Conclusion

The Tenant's application is successful. The May 2022 Notice is cancelled.

The tenancy will continue 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: October 5, 2022

Residential Tenancy Branch