



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNC, OLC**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

The applicant/tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:52 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlords were represented at the hearing by property manager, CC (“landlord”) who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord acknowledged being served with the tenants’ Application for Dispute Resolution Proceedings Package.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Background and Evidence

The tenant did not attend this hearing to provide evidence regarding the merits of her application for me to consider. The landlord’s testimony and documentary evidence was accepted as being undisputed.

The landlord gave the following testimony. The rental unit is one of four units in a fourplex with a fifth unit attached. The tenant's unit is an upper unit whose kitchen and living room windows open up onto the roof of the fifth unit.

On June 15, 2022, the landlord served the tenant with 2 copies of a 1 Month Notice to End Tenancy for Cause by sending via registered mail and by placing a copy of it in the tenant's mailbox. I note that the tenant filed an application to dispute the notice on June 21, 2022, seven days later.

Neither party provided a copy of the notice to end tenancy for me to review, so during the hearing, I had the landlord describe the document to me after being affirmed to tell the truth.

The tenant's first and last name are listed, as is the landlord's (TR, care of the property manager, attending today). The landlord's address is provided, as is the address of the rental unit. It is signed by the property manager, dated June 15, 2022 and provides an effective date of July 31, 2022. The landlord testified that there are 4 reasons for ending the tenancy:

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;
2. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
3. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
4. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

Under "details of cause" the landlord wrote:

"several complaints of garbage and recycling stored on the roof. Noise. Too many guests".

The landlord testified that on May 11th he sent the tenant a message via facebook messenger, asking her to turn down her music. She lives in a fourplex and that if she likes loud music to get headphones. On May 18th he sent her another message saying her music is loud and she has "crap" in the hallway, a common area for all occupants of the fourplex.

The landlord acknowledges there is no proof of illegal activity in the unit, just suspicion of possible drug trafficking.

Regarding the significant interference, the landlord provided a letter from one of the other occupants of the building describing frequent domestic fights involving yelling, the police being called frequently, late night traffic on weekends and poor parking habits. That tenant states that his and his partner's quiet enjoyment has been disrupted. Lastly, this tenant complains of "junk and stuff they have on the roof".

The landlord provided photos of a BBQ, a coffee table and other debris being stored on the roof above unit 5 as corroborative evidence. The landlord testified that the roof over unit 5 is not meant to be a storage area, an area to "hang out" or an area to be used for barbecuing. It has no guard rails since it is not meant to be walked on. There is a significant risk of damage to the roof if the tenant continues to use it for barbecuing, storing garbage, walking on it and hanging out. On June 6th, the landlord sent the tenant a message via Facebook messenger, telling her garbage collection is free and easy and asked the tenant to take the garbage off the roof. If not, he would post an eviction notice. The landlord testified that the tenant did not comply and remove all the garbage she stored on the roof.

Analysis

On June 22, 2022, the tenant filed an application to dispute the landlord's 1 Month Notice to End Tenancy for Cause placed in her mailbox on June 15, 2022. The tenant filed her application within the 10 days as required by section 47(4) of the Act.

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause pursuant to rule 6.6 of the Residential Tenancy Branch Rules of Procedure. 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 Notice. In the matter at hand, the landlord must demonstrate that the tenant did any of the following:

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;
2. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
3. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;

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

The tenant did not attend the hearing to dispute any of the evidence provided by the landlord. Based on the undisputed evidence of the landlord, I am satisfied the tenant has put the landlord's property at significant risk by using the roof over unit 5 as a living space, storing garbage on it and "hanging out" on the space. Based on the lack of a railing, I the roof was not intended to support these functions and I find it reasonable to conclude that using the roof to barbecue food and walk upon poses a significant risk to the building.

Further, I am satisfied, based on the landlord's testimony, that he sent the tenant a message via messenger on June 6th, that she was to remove the garbage she put on the roof over unit 5 within a reasonable time after being given written notice to do so. The landlord has satisfied me this is a material term to the tenancy, as leaving garbage on the roof is unsightly for the other occupants of the rental unit and poses a hazard to them by attracting vermin and insects.

For the reasons stated above, I uphold the landlord's notice to end tenancy. Pursuant to section 51(1) of the Act, 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 the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. A copy of the notice to end tenancy was not provided as evidence by either party, however based on the landlord's undisputed testimony describing the form, I find the notice to end tenancy complies with the form and content provisions as set out in section 52. I grant the landlord an Order of Possession. As the effective date has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

This tenancy is ending. The tenant's application seeking an order that the landlord comply with the Act is dismissed without leave to reapply. The tenant's request to recover the filing fee is likewise dismissed without leave to reapply as her application was unsuccessful.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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 14, 2022

Residential Tenancy Branch