



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALITY DHILLON
DHILLON and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

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

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented by property manager, TG (the "landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. Neither party had issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issues

At the commencement of the hearing, both parties confirmed that the address of the rental unit noted on the tenant's application is correct. Both parties confirmed that the party named as landlord on the tenant's application is also correct and that no changes should be made to either the address or landlord's name.

During her testimony, the tenant advised that one of the documents provided to her in evidence by the landlord, an email from the occupant of the unit below hers dated September 2, 2022 was heavily redacted and was rendered unreadable. The landlord testified that he redacted the names and addresses of parties to protect privacy. Rule 3.7 of the Residential Tenancy Branch Rules states:

Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, **identical** documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office. For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2". To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

I determined that the unredacted copy of the email provided to me was not identical to the copy provided to the tenant and I exercised my discretion to reject it from consideration in this decision.

Issue(s) to be Decided

Should the notice to end tenancy for cause be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on July 1, 2020 with rent set at \$1,750.00 due on the first day of each month. The landlord collected a security deposit and a pet damage deposit at the commencement of the tenancy.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on July 28, 2022 by attaching a copy to the tenant's door. A proof of service document was provided as evidence, as was a copy of the notice.

The notice provides 2 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 seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Under "details of cause" the landlord writes:

- Excessive noise disturbing multiple units in the building during the middle of the night
- forced entry into one of the building units because of intoxication and anger
- spit in a neighbor's face. Police report filed. Tenant is being charged with assault
- Other units in building do not feel safe

The landlord testified that there are 4 units in the building. There have been disturbance texts sent to him from some of the other units and the landlord didn't always correspond with the tenant about complaints about her though he "reached out" to the tenant about some of them. Given his line of work as a property manager, warnings are given regarding behaviour infractions and the landlord gives the tenant an opportunity to change their behaviour. The nature of a particular incident was so severe that the landlord felt the notice to end tenancy should be issued without prior warning.

The trigger to this notice to end tenancy was an incident on July 27th where the tenant allegedly forced her way into the living space of the occupant below hers, spit on her face and yelled at her. This caused the occupant of the lower unit to call the landlord in the middle of the night and he suggested the occupant call the police. The police officer attended and took a police report that was provided as evidence.

The tenant gave the following testimony. She has been a good tenant since the tenancy began. She and the occupant of the lower unit were once friends but once their friendship broke down the occupant has been harassing her with texts and complaints. Petty things such as accusing the tenant of slamming the (shared) washer lid closed at 7:30 in the morning. She's always gotten along well with the other

occupants of the building. The “incident” of July 27th was never fully investigated by the property manager. He never gave the tenant the chance to explain her version of events that night, preferring just the lower unit occupant’s story. The tenant testified that she would never spit on the other occupant and that she would never do such a thing as it would jeopardize her career in the criminology/addictions field.

The tenant argues that the allegations in the police report are all hearsay and that no assault charges were ever laid against her.

Analysis

I deem the notice to end tenancy served on the tenant on July 31, 2022, the third day after it was posted to the tenant’s door, pursuant to sections 88 and 90 of the Act. The tenant filed her application to dispute the notice on August 3, 2022, well within the 10 days as required under section 47.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice.

In the matter at hand, the landlord must demonstrate that:

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 seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Turning to the first reason for ending the tenancy. The Merriam-Webster dictionary defines **significant** as, “*having or likely to have influence or effect, of a noticeably or measurably large amount*”. **Unreasonable** means, “*exceeding the bounds of reason or moderation*”.

In order for me to uphold the notice to end tenancy, I must be satisfied that the tenant’s behaviours were significantly interfering with the well being of other occupants of the building or that her actions unreasonably disturbed them. While the landlord testified that other occupants of the building texted him and communicated with him regarding the tenant, I accept the landlord’s testimony that he felt their complaints were so minor that he chose not to give a written warning to the tenant or to formally advise her that her behaviour was so egregious that her tenancy was at risk of ending. Further, the

landlord did not provide into evidence any written complaints from other occupants about the tenant's behaviour prior to the issuance of the notice to end tenancy; leading me to believe the landlord did not consider them to be significant or unreasonable.

While the landlord did provide emails from other occupants referring to incidents **after** the issuance of the notice, I cannot use these to determine whether the landlord had cause to end the tenancy as of July 28, 2022. I must be satisfied that at the time the notice was served, the landlord had just cause to end the tenancy. I find that the landlord has provided insufficient evidence to satisfy me the first reason for ending the tenancy has been provided.

The second reason for ending the tenancy is the allegation of spitting in the lower occupant's face or forcing her way into that occupant's living space. The written account of that person's recollection was excluded from consideration, and I am left with the landlord's testimony and the police report to base my decision upon. The landlord acknowledges he was not present for the incident of July 27th and cannot provide first hand testimony regarding it. Likewise, the report from the police simply records the testimony of the lower unit occupant and the tenant. The police report notes that the tenant insisted she never spat in the occupant's face and the testimony of the tenant before me today corroborates that.

The tenant also testified that she never forced her way into the lower unit. The landlord did not call the lower unit occupant to provide any testimony at this hearing and the landlord himself was unable to provide firsthand testimony to dispute the tenant's version of events. As stated previously, the onus is on the landlord to prove the grounds for ending the tenancy. I find on a balance of probabilities; the tenant did not spit in the face of the lower unit occupant or force her way into that person's unit. The second ground for ending the tenancy has not been proven. Consequently, I find the notice to end tenancy has no force or effect and I cancel it.

The tenant's application was successful, and she is entitled to recover the filing fee. In accordance with the offsetting provision of section 72, the tenant may reduce a single payment of rent owing to the landlord by \$100.00.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it is 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: December 30, 2022

Residential Tenancy Branch