



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SALT SPRING COMMUNITY
SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard. The tenant was accompanied by her support workers. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Both parties filed a considerable amount of documentation into evidence. I have reviewed all the evidence and testimony of the parties but will refer only to what I find relevant for my decision.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began in January 2021. On March 17, 2023, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner on March 21, 2023.

The notice was served for the following reasons.

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
2. Tenant or a person permitted on the property by the tenant has:
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - c. Put the landlord's property at significant risk.

The tenant stated that she suffers from neurodivergence and trauma response. In her documentary evidence she states that her eight-year-old son is also neurodivergent and has been diagnosed with PTSD, Anxiety and ADHD. The child, (NB) is fully supported by counsellors but still struggles with self regulation and has emotional outbursts that result in noise disturbances.

The landlord testified that in the last 18 months, he has received multiple letters of complaint from the other residents of the rental property. The complaints consist of noise disturbances at all hours of the night, smoking marijuana in the rental unit, mistreatment of a dog and garbage strewn outside the rental unit. The landlord responded by arranging for counselling and cleaning services to assist the tenant.

The complaints kept coming in and over a period of 18 months the landlord received a total of 30 complaints. Copies of the complaints were filed into evidence. The landlord served the tenant with ten warning letters during this period.

The tenant stated that the dog was approved of by the landlord and was not at the rental unit on a permanent basis. The tenant denied smoking inside the rental unit and stated that the smoke was from Sage that she burns regularly. She agreed that her partner prepares his marijuana while inside the rental unit but does not smoke inside the unit. The tenant agreed that the noise disturbances were from NB which were aggravated when his father visited. The tenant stated that she made arrangements for NB to live with his father, part time. The tenant stated that one of the warning letters re noise complaints was inaccurate because on that night, she was careful not to disturb her two sleeping children while she celebrated her birthday.

The tenant testified that she has made efforts to control the noise and to be a good neighbour. The landlord stated that the complaints are continuing to come in. When a mobile home became vacant for one month, the landlord allowed the tenant's immediate neighbour to move in there, for temporarily relief.

The tenant also stated that the landlord could apply for funds to soundproof the rental unit. The landlord stated that the unit was brand new when the tenant moved in. The tenant filed several letters of support from social workers and community members.

The landlord was very clear that in the interest of the well being of other occupants, he wanted the tenancy to end. However, the landlord recognised the difficulty that the tenant would have, finding alternative accommodation and therefore agreed to allow the tenancy to continue until October 31, 2023, to give the tenant enough time to find housing.

Analysis:

In order to support the notice to end tenancy, the landlord must prove the reason for the notice to end tenancy. Based on the documentary evidence and the verbal testimony of both parties, I find that the tenant's son created and continues to create noise disturbances which are out of his control and are associated with his health condition. I further find that the tenant has made efforts to correct the situation.

The tenant was given written warning and verbal warnings, but the behavior continued after the warnings. The tenant was also served a notice to end tenancy. The landlord testified that the noise disturbances continued. I find that the landlord made efforts to rectify the situation which included providing counselling and cleaning services.

Upon careful consideration of the evidence before me I find that the root cause of the complaints (noise disturbances) continues to exist and that the disturbances are serious enough to cause the other occupants of the building to voice their concerns in writing. Based on the written complaints, I find that due to the nature of NB's health condition, the noise disturbances will continue and will continue to adversely affect the quiet enjoyment and physical well-being of the other occupants of the property.

Therefore, I uphold the notice to end tenancy and grant the landlord an order of possession effective by 1:00pm on October 31, 2023. 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.

Conclusion

The notice to end tenancy is upheld and the tenancy will end. I grant the landlord an order of possession effective by 1:00pm on October 31, 2023.

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: June 09, 2023

Residential Tenancy Branch