



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord also called 3 witnesses and the tenant called 1 witness, all of whom gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

The tenant has not provided any evidentiary material, and the parties agree that all of the landlord's evidence has been provided to the tenant. Therefore, all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?

Background and Evidence

The landlord is a property manager and testified that this month-to-month tenancy began on May 1, 2023 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month. No rent has been paid for this month (March, 2024), however there are no additional rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$475.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment suite in a very small complex containing

6 units, 4 in the upper level and 2 in the lower level. The tenant lives in the upper level. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on January 23, 2024 the landlord served the tenant with a One Month Notice to End Tenancy For Cause (the Notice) by attaching it to the door of the rental unit. A copy of the Notice has been provided for this hearing and it is dated January 23, 2024 and contains an effective date of vacancy of February 29, 2024. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- 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;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The rental unit was rented to the tenant and his son. On or about January 6, 2024 the landlord started getting complaints of noise, people coming and going, the front door slamming all hours of the night, yelling, screaming and a generator or compressor noise. The landlord sent a Facebook message to the tenant on January 11, 2023. The tenant phoned the landlord saying that his son had moved out at the beginning of January, 2024 and that the tenant had allowed 2 others to move in. The landlord is not sure who they are and was never spoken to about it previously. The landlord indicated that if any other problems existed, the landlord would have to issue an eviction.

The landlord sent another message on January 17, 2024 after receiving complaints on saying that the landlord was still getting the same complaints in addition to complaints about people doing laundry. The landlord does not reside on the rental property, and went there on January 17, 2024 and could hear a loud bass pounding and a woman screaming at 11:00 a.m.

There were also concerns about parking, wherein someone was taking up 2 parking spots. A truck was parked in 2 spots so another tenant couldn't use his parking spot, or horizontally blocking spots. The landlord continued to get complaints all weekend and on the 19th of January, 2024 the landlord sent a third message to the tenant saying that the landlord would be issuing an eviction. The parking issue has mostly been resolved,

but guests are still parking in front of the garbage bin and in front of other vehicles. Photographs have been provided for this hearing. The landlord took the photographs while attending to drop off evidence to the tenant. It was a friend, who is there all the time, and another vehicle was parked in the tenant's spot. All other tenants said that it didn't belong to them.

Three tenants have complained continuously about noise, the amount of people in the rental unit, the amount of people coming and going who were there for a short amount of time, and a chemical smell in the building. Other tenants have also complained about burning eyes and difficulty breathing. Two of them went to a doctor, sure that something was being burned in the tenant's apartment.

With respect to illegal activity, the landlord testified that the tenant is selling drugs, due to people coming and going all night. Only tenants have a key to the front door, but the tenant leaves the door ajar, based on what others have told the landlord.

With respect to breach of a material term of the tenancy agreement, the landlord testified that the tenant and his son were to reside there. When the tenant acquired another tenant, he should have contacted the landlord. Based on the Face Book message from the tenant on January 11, 2024 the tenant advised that his son had moved out and he allowed 2 more roommates.

The landlord's first witness (DB) testified that the witness has contacted the landlord on several occasions. The witness has not been living at the rental complex for long.

Noise is unfathomable at all hours. Hostility in the hallway is not normal or nice. Coming home after working a 12 hour nightshift, the witness' parking spot has been taken up. Multiple times the witness is blocked in, and most of the time it was guests of the tenant. It's an ongoing thing and causes confrontation. The witness has asked people to move their vehicles, but they are not nice. The tenant has always been nice, but the people he brings around are the problem.

People that the witness does not recognize are at the rental complex non-stop. The front door is being slammed, and people are shouting. The front door has been left ajar at all hours, and the witness has seen the tenant open it, leave it open and foot traffic entering. The witness works day shift and night shift, and for the 3 months the witness has lived there, the witness can't keep up with how many people are there; non-stop traffic and the witness hears the front door slamming at 2:00 or 3:00 a.m., and other tenants having confrontations. The noise in the hallway and bass music is 100% coming from the tenant's rental unit and is non-stop. It's never possible to sleep. From

7:00 at night to 7:00 a.m. doors are being slammed, people are yelling. There are always people there that the witness does not want to interact with.

The witness shares a wall with the tenant and the noise sounds like a compressor running night and day, very loud, as well as loud bass music. The witness works in a shop and knows the sound of a compressor. The witness has told the landlord that the witness wants to move out and can't deal with it.

The witness has called police several times, for a lot of reasons that need to be dealt with.

The landlord's second witness (CV) testified that the witness has complained to the landlord on several occasions referring to quiet enjoyment and on the witness' husband's behalf. At the beginning, when the witness first saw the tenant move in, things slowly started to get worse; louder, more traffic in and out of the building.

The witness got a rash around the eyes and for 4 days were swollen, itchy and the witness had to go to emergency and miss work multiple times. The doctor said there was nothing that the witness could do and that it is airborne. It's been going on since the tenant moved in and every 4 days continues. The witness has never had such rashes before. The witness also testified that a strong smell comes from under the tenant's door, gasoline or strong perfume.

The witness also has issues with sleeping due to people coming in and going out and leaving the door open a crack. The witness has no idea what they do, but the witness doesn't feel safe. Tenants have keys for the first door and for their apartments, that's why it is locked. The witness has lived in the rental complex for 4 years and testified the witness' spouse is constantly looking out the window to see who is out there.

The tenant has been polite to the witness, but not the people who have been there.

The landlord's third witness (DB) testified that the witness has resided in the rental complex for 2 ½ years. Since the tenant's son moved out, 4 other people have moved in and they park where they shouldn't, party, fight, drink and holler all night long. The front door is left open all night, and is being slammed.

The witness also testified that her eyes and skin start to burn, and the witness has been to the hospital a few times, and has not experienced that until the tenant let all these people in. The witness has also been seeing a counsellor; the witness can't sleep, worried about who is coming and going, making the witness feel very unsafe.

The witness has been sworn at by people and people use the witness' parking spot. Police told the witness to take plate numbers, and the witness has kept 16 numbers. The witness watched the tenant sell drugs in the hallway not long ago.

The witness wants a quiet building and her security back. The witness has called police, and will continue.

The tenant testified that this is a witch hunt. The compressor noise is actually the bathroom fan. The tenant has asked to have it fixed, but it's still not been done. The noise is so loud that the tenant can hear it in the hallway.

Now just the tenant and 1 roommate are living the rental unit. The tenant's roommate works night shifts, and both go to work after 2:00 a.m. The tenant is currently under physician care.

The tenant opens the door for visitors and lets them out, and has never had contact with police. The tenant called the landlord and told her about people moving in. The tenant had agreed that it's been loud, but that was corrected. The tenants are courteous. Parking had also been an issue, but that has been corrected.

The tenant was accused of having a meth lab in the kitchen, and the tenant told the landlord she could come in at any time. There has been no contact with the police or the fire department. The tenant doesn't know how they say it's all the tenant's fault.

The tenant's witness (JLW) testified that the witness lives with the tenant, and has not had any contact with police or the landlord or other tenants about noise or complaints. However, tenants have approached the witness with mean comments. There is no reason for other tenants to feel threatened. The guests of the tenants are not criminals; they have families and good jobs.

The bathroom fan is aggressively loud, and may sound like a compressor.

The witness denies there is any drug trafficking.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy For Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

With respect to the first reason: Tenant has allowed an unreasonable number of occupants in the unit, I only see in the evidence that there are only 1 tenant and a roommate, who replaced the tenant's son after he moved out. The landlord testified that the tenant had advised that his son moved out at the beginning of January, 2024 and the tenant allowed 2 others to move in, but the landlord doesn't know who they are. The tenant and the tenant's witness testified that only the 2 of them reside in the rental unit. Therefore, I am not satisfied that the landlord has proven an unreasonable number of occupants or that the landlord has established that any of the tenants' guests are occupants.

With respect to the next reasons for ending the tenancy: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, such interference must be significant, and any disturbance must be proven to be unreasonable. I've heard from several witnesses and the landlord who all gave affirmed testimony about noise, insecurity, safety, lack of sleep and multiple complaints. I cannot ignore that testimony, and I find that the landlord had cause to end the tenancy.

Having found that the landlord has established that the Notice was issued in accordance with the *Act*, it is not necessary for me to examine all of the other reasons for ending the tenancy, and I dismiss the tenant's application to cancel the Notice.

The law states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession, which may be filed in the Supreme Court of British Columbia for enforcement.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: March 09, 2024

Residential Tenancy Branch