



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 One Month Notice to End Tenancy For Cause.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord also called 2 witnesses who gave independent affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

The parties agree that all evidence has been exchanged, and all evidence and testimony I find relevant to the application 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*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 15, 2023 and the tenant still resides in the rental unit. Rent in the amount of \$1,800.00 is payable on the 1st day of each month and there are no rental arrears. On September 15, 2023 the landlord collected a security deposit from the tenant in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an upper level suite in a house that also contains 2 lower level suites; the landlord does not reside on the rental property.

The landlord further testified that on July 30, 2024 the landlord personally served the tenant with a One Month Notice to End Tenancy For Cause, and a copy has been provided by the tenant for this hearing. It is dated July 30, 2024 and contains an effective date of vacancy of August 30, 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~~;
- Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

The rental unit has 2 bedrooms, but when the landlord rented to the tenant it was only for the tenant. The tenant's girlfriend moved in without telling the landlord for about 3 months. The girlfriend started problems with the lower level tenants which was when the landlord found out about the girlfriend living there.

The tenant was making videos of the lower level tenant and that person's girlfriend, and was making comments that the girlfriend of the lower level tenant has a big butt. The tenant's girlfriend has been banging doors and stomping on the floor, and the lower level tenant has given notice to end that tenancy, and told the landlord that while he plays music the banging happens. The landlord has received noise complaints coming from the tenant's rental unit about a baby crying at night time. The tenant's girlfriend is babysitting, and the baby cries continuously at 1:00 a.m. and the lower level tenant has to go to work early. The lower level tenant stays at home and plays music during the day.

The tenant is a good tenant, but his girlfriend is causing problems. The landlord had a meeting with the lower level tenant wherein the landlord said that the tenants can talk or text each other.

The tenant hasn't paid the utility bills. The tenant agreed to pay 50% of the utilities, Fortis gas, hydro and water. The tenant had a swimming pool which cost \$300.00 for water. The tenant did pay 50% until April, 2024.

The landlord's first witness (RS) testified that the witness lives in a basement suite owned by the landlord on a different property. The witness always goes with the landlord to collect rent. The landlord asked the tenant to sign a tenancy agreement, but the tenant said that in the past he had never signed one.

The witness was also present when the landlord asked the tenant to pay utilities, and the tenant agreed to do so, but the landlord has told the witness that the tenant has not paid them.

The landlord's second witness (WE) testified that he lives in one of the lower level suites of the rental property. The tenant's girlfriend has been slamming around, banging with her feet and doing laundry at 6:30 a.m. and recorded the witness and the witness' friend outside.

When the witness was taking down a fence, the tenant's girlfriend wanted to know if the witness had permission from the tenant to remove it. All tenants take care of the yard, and the witness and the tenant repaired the fence.

The tenant testified that when the landlord filled out the tenancy agreement, she spelled the tenant's name incorrectly, and continues to write the tenant's name wrong. The tenant corrected it on the tenancy agreement, and the landlord took it home. Neither party signed the tenancy agreement. When the landlord gave the tenant the One Month Notice to End Tenancy For Cause, the landlord stapled it to the tenancy agreement and gave it to the tenant.

The lower level tenant plays music quite loud daily, and banging happened once only. There are no door knobs on doors, just deadbolts.

The tenant's girlfriend does her schooling on a laptop, and multiple messages have been sent to the landlord and to the lower level tenant about turning down the music. The lower level tenant told the tenant to turn up his television. Music is played all night and day, and the tenant has spoken to the lower level tenant about it. The landlord keeps wanting the tenant to resolve the problem with the lower level tenant, but the lower level tenant won't listen to the tenant, but sometimes listens to the landlord. The other lower level tenant told the tenant that the landlord threatened to evict him, so he doesn't want to complain for fear that he will get into trouble with the landlord.

With respect to the video, for 3 days and nights there were people coming and going and partying constantly, and the tenant has found people on the tenant's deck. The tenant wanted to show the video to the landlord, and when the landlord saw it, she was appalled and said she would talk to the lower level tenant. The tenant's girlfriend had nothing to do with it.

With respect to the fence, although the lower level tenant does help around the house with cleaning gutters or when the tenant needs help, but the majority of the work is done by the tenant.

In July when the tenant paid the rent, the tenant gave the landlord a letter saying that the tenant needs receipts and invoices, but has never received them from the landlord, and the landlord didn't follow up until rent was due for the next month.

On August 23, 2024 the tenant's girlfriend babysat for her sister and the baby was teething and crying. There was only 1 occasion that the tenant's girlfriend babysat, not constant, but only on that date and for a couple of hours.

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.

Considering that this is a 2 bedroom suite, and the tenant has an additional occupant, I do not see that the tenant has allowed an unreasonable number of occupants in the rental unit as being a reason for ending the tenancy. I also refer to Residential Tenancy Policy Guideline 19, Assignment and Sublet, which states, in part:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the RTA.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.

When determining whether a One Month Notice to End Tenancy (form RTB-33) for cause was issued properly, the arbitrator will examine a number of factors, including the terms of the tenancy agreement between the original landlord and

the tenant, whether the agreement contains terms restricting the number of occupants or the ability of the tenant to have roommates and the intent of the parties. As the facts of each case differ, an arbitrator will have to consider all the evidence submitted by the parties when making a determination.

There is no tenancy agreement restricting the tenant from having a roommate. Therefore, I am not satisfied that the landlord has established that the tenant has allowed an unreasonable number of occupants in the rental unit, or that the tenant has assigned or sublet the rental unit.

With respect to the landlord's claim that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant, the parties agree that the landlord has left it to the tenant and the lower level tenant to work out their differences. If that works, then fine, but the landlord is responsible for providing quiet enjoyment to all tenants.

The landlord testified that the lower level tenant has told the landlord that while he plays music the banging starts. There is no evidence to the contrary that the lower level tenant plays music loud all day and all night, with the exception of a letter given to the landlord by the lower level tenant, indicating that banging on the floor occurs when the lower level tenant plays music at a reasonable volume. I have also reviewed the text messages exchanged between the tenant and the lower level tenant, wherein the tenant has asked numerous times that the lower level tenant turn down the music. Therefore I accept the undisputed testimony of the tenant. There is no evidence to satisfy me that the disputes between the tenant and the lower level tenant stems from the tenant's girlfriend, but perhaps the lower level tenant.

The only evidence of a crying baby is a note apparently given to the landlord from a lower level tenant. However, that note is not taken under oath or affirmation, and therefore, little weight can be given to the note. I also accept the undisputed testimony of the tenant that the baby was only there on 1 occasion.

Although it is not a reason for ending the tenancy, the landlord testified that the tenant has not paid the utility bills. The tenant testified that he asked the landlord for copies of the bills, which the landlord must provide to the tenant. It is not sufficient to tell the tenant that his 50% share of utilities is \$300.00 or some other amount. Pursuant to my authority under Section 62 (3) of the *Act*, which states:

62 (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or

tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I order the landlord to provide all utility bills to the tenant prior to the date they are due.

Having found that the landlord has not established any of the reasons for issuing the Notice, I cancel it and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been successful with the application, the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant in that amount. The landlord must be served with the order, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may file the order in the Provincial Court of British Columbia, Small Claims division and enforce it as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated July 30, 2024 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby order the landlord to provide the tenant with copies of all utility bills prior to the date they are due, as well as previous bills.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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 17, 2024

Residential Tenancy Branch