



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an application by the landlord for an early end of tenancy and an order of possession. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Should the tenancy end early? Is the landlord entitled to an order for possession?

Background and Evidence

The rental unit is the upper floor of a home in Nanaimo. The tenancy began in June, 2013. The lower floor is rented to other tenants. The landlord filed this application for dispute resolution on November 14, 2013. She is seeking an early end to the tenancy. The landlord's principal reasons for the application are her assertions that the tenant has terrorized her other tenants, one of whom has moved out and the current tenant, who is threatening to move if the tenant is not evicted. The landlord claimed that the tenant has harassed and intimidated the other occupants. She testified that during a telephone conversation on November 11th the tenant used foul language and threatened to kill the downstairs tenant. She also said that the tenant has made unfounded calls to the "welfare department" to make reports about the other tenant. The landlord acknowledged that this information was based on statements from the other tenant. The landlord submitted documentary evidence including letters from her former and current tenants. The landlord said that the tenant left her children home unattended and they caused a serious disturbance to the downstairs tenant. The landlord said that the screaming and crying of the tenant's children is an ongoing concern. The landlord said that the tenant's conduct has caused her tenants to move out and this is costing the landlord to lose income. She said that the downstairs tenant's child is frightened of the tenant and she will move out if the tenant stays.

The tenant testified that it she who is disturbed by the downstairs tenant, rather than the reverse. The tenant complained that the downstairs tenant leaves her dog locked in the suite unattended and the dog barks incessantly. The tenant also said that she rented the unit because it was a non-smoking unit, however the downstairs tenant smokes in the unit and this affects her daughter, who has an allergic reaction to smoke. She testified that she has reported the problem to the landlord, but the landlord has told her that her suite is a non-smoking suite, but that does not apply to the rental property.

Analysis

Under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish that “it would be *unreasonable, or unfair* to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47” (emphasis mine). I am not satisfied that this unreasonableness or unfairness exists. The landlord claimed that her other tenants have been harassed and intimidated by the tenant; they submitted written statements, but were not called upon to testify at the hearing. The tenant is said to have threatened the occupant of the lower suite, but I find there is no convincing evidence of any serious threat. I find that the landlord's complaints of noise and disturbances, which are discounted by the tenant, are not matters that would justify the use of the extraordinary remedy of ending the tenancy without notice and accordingly I dismiss the landlord's application. The landlord served the tenant with a one month Notice to End Tenancy for cause dated November 20, 2013. The tenant has applied to dispute the Notice to End Tenancy and the hearing of that matter is set for January 16, 2014. The landlord may raise her alleged grounds for ending the tenancy at that hearing.

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 13, 2013

Residential Tenancy Branch

