Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCHE VIEW LODGE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Several individuals appeared on the landlord's behalf. I received affirmed oral testimony from two: JF, a director of the landlord, and CS, the society's manager. The tenant appeared with her advocate. All parties were given the opportunity to be heard, to present affirmed oral testimony, to call witnesses, to make arguments and to cross examine the other party.

The landlord served its 1 Month Notice to End Tenancy For Cause (the 1 Month Notice) on 30 October 2014 to the tenant. The 1 Month Notice was delivered personally. The tenant admits service of this document. I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the Act.

The tenant testified that she served the landlord with the dispute resolution package, which contained all of her evidence and the tenant's submissions. The tenant testified that she placed the dispute resolution package on the society manager's desk and left her a note regarding the documents. This is not a method of service contemplated in subsection 89(1) of the Act. The JF testified that the landlord received the notice of dispute resolution, but denies that they received any other documents that the tenant testified were contained with the notice. The landlord testified that, with the notice of dispute resolution, it received a blank landlord's application for dispute resolution and a fact sheet. The landlord understood that this application pertained only to the tenant's

application to cancel the 1 Month Notice. As the landlord did not have notice of the tenant's monetary claim, I will not consider it. The landlord did have sufficient notice of the tenant's application to cancel the 1 Month Notice. On the basis of the evidence before me, I find that the landlord has been served with the dispute resolution package pursuant to section 89 of the Act only for the purposes of considering the tenant's application to cancel the 1 Month Notice.

The tenant applied for a monetary order of $320.00 in relation to her allegations of loss of quiet enjoyment and the diminished value of her tenancy. As I declined to consider the tenant's application in relation to monetary damages, I dismiss that portion of her claim with leave to reapply.

The landlord testified that she served the evidence to the tenant personally. The tenant admitted that she had received this evidence. On the basis of this evidence, I am satisfied that the tenant was served with the evidence pursuant to section 88 of the Act.

At the hearing the landlord made an oral request for an order of possession in the event I dismissed the tenant's application to cancel the 1 Month Notice.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, miscellaneous letters and email messages, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began on 1 October 2011. The agreement specified $320.00 in monthly rent. The agreement indicates that the tenant paid a pet deposit of $160.00.

On 30 October 2014, the landlord delivered the 1 Month Notice to the tenant. The 1 Month Notice indicated that it was issued because:

> *The tenant or 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

Put the landlord's property at significant risk

No other reasons for cause were indicated in the 1 Month Notice. I was provided with evidence regarding material terms and late payment of rent and parking fees, which are <u>in no way relevant</u> to this application.

The landlord testified to three types of behavior that it believes supports its 1 Month Notice:

1. the tenant runs a home business;
2. the tenant did not keep her apartment in a safe and habitable state; and
3. the tenant keeps pets in her rental unit.

The landlord and tenant provided testimony regarding each of these alleged behaviors.

The landlord argued that the tenant was running a business from her home and that this business jeopardized their insurance coverage.

The landlord testified that the tenant has been witnessed with up to three children in her care.

The landlord provided me with the letter to their insurance broker in which they ask:

> *Can you please confirm in writing your verbal statements that you consider the tenant is operating a business in their unit that is not covered by our insurance policy and therefore we are at risk of liability should something occur due to the services provided by the tenant.*

The landlord provided me with the email response from their insurance broker:

> *'1. …we are an intermediary between you (the client) and insurers, we assist your organization with risk exposure identification and its transfer via insurance. Ultimately, it is an insurance company who makes a decision on coverage and insurance settlements….*
> *3. Any changes in operations that affect underwriters decision to whether to insurer or decline the risk are 'material' changes. "Material Change" is a statutory condition. The onus to advise a 'material change' is on the insured. Failure to do so may result in coverage declination.*
> *…Bearing in mind all of the above we have to notify insurers about material change in risk (e.g. a tenant doing business out of the residential unit, children on premise), unless "unauthorized" activities are stopped.*

The landlord provided a letter dated 30 October 2014 to the tenant. This letter sets out:

> *In discussions with BC Housing and our insurer they consider that you are offering a service which classifies as a business. As such we are at material risk of liability should something occur due to the services provided by you.*

I disagree with the landlord's conclusions regarding the content of the email. The letter specifically does not address whether ***this*** tenant is carrying on a business or whether the conduct of ***this*** tenant constitutes a material change that would affect the landlord's insurance. Furthermore, the insurance broker indicates that any decision as to the materiality of this tenant's conduct would have to be determined by the insurer.

The landlord provided testimony that children are allowed to visit the rental complex. The landlord testified that the rental complex is an unsafe place for children. The landlord provided testimony that the other tenants appreciate "more peace and quiet".

The tenant testified that she now babysits from her parents' home.

The tenant's advocate submits that the temporary care of one child is not a business. The tenant provided evidence that she no longer babysits children in her apartment and only at her parents' home.

In July 2012, the landlord gave the tenant 72 hours written notice that the rental unit was to be inspected. I was provided with a copy of this notice. On 13 July 2012 the inspection took place. In that inspection, the landlord found that the rental unit was untidy and that there was a piece of sticky tape on the outside of the window.

In February 2013, the tenant was given notice of an inspection. On 21 March 2013, the landlords inspected the rental unit. In this inspection the rental unit was found to be in good repair.

On 22 May 2014, the landlord conducted an inspection of the rental unit. The tenant was not present for this inspection and testified that she did not receive any notice of that inspection. The landlord testified that it is their practice to put the inspection notice in the tenant's mailbox if they do not answer the door. I accept that the landlord did provide notice of this entry. The landlord testified that the rental unit was found to be in unacceptable condition, stating that there were signs of multiple pets including a bird or hamster and that it was hard to be in the unit because of the smell. The landlord wrote to the tenant on 28 May 2014 describing the results of the 22 May 2014 inspection:

> *Your residence did not meet the minimum requirements of policy #40 regarding tenant maintenance responsibilities which includes cleanliness/ sanitary standards and policy #8 the care of pets in regards to health and cleanliness.*

I was provided with the annual inspection report dated 22 May 2014. It notes:

> *Needs to clean path to door*
>
> *Filthy + bad smell may be leaking around toilet*
>
> *This whole place needs a major cleaning – it is very dirty and there is a foul smell throughout the whole place.*

On 23 June 2014, the landlord delivered an inspection notice to the tenant. The inspection was conducted 26 June 2014. The landlord testified that the rental unit was a safety hazard, was dirty, and smelled like urine. The landlord wrote to the tenant on 26 June 2014 regarding the condition of the rental unit:

> *…the rest of the apartment was found to be cluttered to the point that there is no clear pathway to the outside doors which results in it being a fire trap. The counters in the kitchen were filled with dirty dishes as was the sink. Inside the refrigerator needs to be cleaned of spills, there was garbage on the floor.*

The annual inspection report from 26 June 2014 makes all the same observations.

On 24 October 2014, the landlord delivered an inspection notice to the tenant. On 29 October 2014, the inspection occurred. The landlord testified that the unit met the minimum standards for cleanliness.

The landlord testified that on 19 August 2013 the tenant paid a $160.00 pet deposit. The landlord alleges that at various times the tenant has kept dogs, hamsters and birds in the rental unit. The tenant admits that in the past she periodically had a hamster, bird and dogs. The tenant testified that she currently has one cat, who was suffering from a bladder infection that caused a bad smell, but that the cat is now treated.

The landlord alleges that the tenant's pets and babysitting services caused her neighboring tenant to move out. The tenant testified that her neighbor moved out because the tenant called the RCMP to attend at the unit as a result of the neighbor's loud parties and harassment. I was not provided with a statement from the neighbor or any letters of complaint that she had made. I find that there is insufficient evidence to support the conclusion that the neighbor left as a result of the tenant's conduct.

Analysis

At the time of the 1 Month Notice, I find that the tenant was not providing any babysitting services in the rental unit, that the tenant had one cat, and that the rental unit was in satisfactory condition. As such, I find that the landlords have failed to meet their burden to prove on a balance of probabilities that 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; or
- put the landlord's property at significant risk.

I was provided with two decisions of the Residential Tenancy Branch regarding babysitting as a business. I am not bound by other arbitrators' decisions. Notwithstanding the fact that the decisions hold no precedential value, these cases are easily distinguishable from the application before me. In one case, the tenant advertised her services on the internet. In this case, there are no such alleged indicia of trade. In the other case, the 1 Month Notice for Cause set out "breach of a material term" as a reason to end the tenancy. In this case, this reason was never alleged by the landlord.

The tenant should not consider this decision an endorsement of her behaviour. I limit my decision to my finding that the landlord failed to prove on a balance of probabilities that the tenant's behaviour provides grounds for any of the three grounds indicated by the landlord on the 1 Month Notice.

As the landlord was not provided with notice of the tenant's intent to seek a monetary claim, I dismiss the tenant's claim for damages or loss without leave to reapply.

Conclusion

I allow the tenant's application in relation to the 1 Month Notice and order that the 1 Month Notice is cancelled. The tenancy will continue.

The remainder of the tenant's application is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the *Residential Tenancy Act*.

Dated: November 28, 2014

Residential Tenancy Branch