



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0810867 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect. The application states that it is urgent and the tenant is an immediate threat to life and/or to property.

An agent for the landlord company and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and make submissions. No issues with respect to service or delivery of documents or evidence were raised and all evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the tenancy should end earlier than a notice to end the tenancy would take effect?

Background and Evidence

The landlord's agent testified that this tenancy began prior to the landlord purchasing the property in 2009. The tenant (LC) entered into a new tenancy agreement with the current landlord for a fixed term to begin on January 1, 2009 and to expire on December 31, 2009 after which it reverted to a month-to-month tenancy. The landlord's agent does not know when the other tenant moved in, however both tenants still reside in the rental unit. Rent in the amount of \$743.35 is currently payable under the tenancy agreement and there are currently no rental arrears. No security deposit or pet damage deposit was collected or passed over from the previous owner. The rental unit is a manufactured home on a City lot. A copy of the tenancy agreement has not been provided.

The landlord's agent further testified that the landlord received a letter from the City, a copy of which has been provided. It is dated December 13, 2016 addressed to the landlord company and states, in part, that neighbourhood complaints have required attendance by Bylaw and RCMP staff and that due to the ongoing problems, Council will give consideration to declaring the property a nuisance at a meeting on January 16, 2017. It also states that if declared

nuisance property, staff will record and charge for all municipal services including police, fire and bylaw personnel required to abate the nuisance, and the landlord may attend the meeting to show cause why Council should not proceed.

The landlord issued a 1 Month Notice to End Tenancy for Cause the day the letter was received. It was personally handed to the tenant (JD) on December 20, 2016. A copy has been provided and it is dated December 20, 2016 and contains an effective date of vacancy of February 1, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - jeopardize a lawful right or interest of another occupant or the landlord.

The next day the landlord received a copy of a letter sent to the City from RCMP, a copy of which has also been provided. It is dated December 12, 2016 and recommends that the property be brought to the attention of council for consideration of nuisance designation pursuant to the bylaw. It also states that since 2007 the RCMP has had 89 operational files relating to the property and has responded to 16 calls in 2016. It states that incidents of intoxication, violence, assaults and disturbances have occurred, the most recent of which involved a life-threatening assault to a guest at the residence on November 25. It also explains that the tenants open their home to homeless and transient individuals, and that 2 adjacent properties are presently designated as nuisance properties which are connected to the rental property.

The tenants had been sent letters by the landlord company prior, copies of which have been provided, dealing with the unsightly yard and indicating that if not cleaned up, the landlord would take steps to end the tenancy. The tenants made some progress, but a reminder letter was also sent a few months later. The landlord was also notified by the City of the unsightly yard and the landlord notified the tenants that monthly inspections would be scheduled which started in July, 2016. Again, some effort and progress was made.

The landlord received a registered letter from the tenants earlier this week which included the second page only of a Tenant's Application for Dispute Resolution. There appeared to be no indication that it had been filed with the Residential Tenancy Branch, and the landlord called and was advised that the application is not on file with the Residential Tenancy Branch. The landlord has not been served with a filed application for dispute resolution by the tenants disputing the 1 Month Notice to End Tenancy for Cause.

The landlord has also provided a copy of Residential Tenancy Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises, and submits that the landlord started to deal with this issue in February, 2016 where the landlord clearly articulated their position, and the unsightly yard is a material term of the tenancy agreement. Issues are the accumulation of junk, garbage, noise disturbance complaints of the City and issues identified by police. The

landlord's agent submits that 16 calls in a year is not acceptable nor resolving the situation. Police and the City agree there are other problems in the neighbourhood, but specifically mention the rental property.

The landlord seeks an Order of Possession effective earlier than February 1, 2017, which is the effective date of vacancy on the 1 Month Notice to End Tenancy for Cause.

The first tenant (LC) testified that the rental property is surrounded by nuisance houses. Calls to police originate from the rental home, but 90% of those calls are on behalf of other people. On one occasion the tenant saw a neighbour chasing someone with a gun so the tenant called police. The neighbourhood has a couple of "dark houses" and gates run to other houses joining all of the properties. Whenever there is trouble, all are joined together, and people are running and fighting. Most places don't have phones, so the tenants call emergency services when required, and therefore the calls are registered to the rental home.

The tenant further testified that the matter has not yet gone before City Council, and the meeting is next Monday night. The matter is in Arbitration before it's been classified as nuisance property, and it may not be. The tenants intend to attend the meeting because it affects their residence. The tenant has resided in the rental unit for 10 years, and the other tenant for 8 years. The tenant is disabled and both tenants are elderly and don't have the funds to move. The tenants have helped those who are less fortunate, but will not be assisting others in the future.

The tenant further testified that she went to the BC Access Centre and was told that the tenants didn't have to dispute the 1 Month Notice to End Tenancy for Cause because all that would do is provide a date for the hearing, and it's already scheduled by the landlord. A copy of the page sent to the landlord by registered mail has been provided, and it applies for an order cancelling a notice to end the tenancy for cause, and states in handwriting, "Sent before the matter has even been before the City." It is signed by the tenant and dated January 4, 2017.

The tenant also submits that the tenants are not the problem; it's the surrounding area, a "druggy" end of town, which the tenants try to resolve.

The second tenant (JD) testified that the City inspected the property in December, 2016 and said it passed inspection inside and outside.

He further testified that people run through the gates joining the properties and the tenants have had things stolen from them.

On December 20, 2016 a person arrived on the rental property uninvited, and at some point had hit another person on the head with a stick. That person was in a coma for 7 days and is half paralyzed now. The person ran away and the tenant assisted police with arrest. A special forensic unit arrived, and the tenants were put up in a motel. Victim Services is still assisting the tenant with that trauma. The perpetrator is still in jail, and the tenant has learned that he plead not guilty today.

Sometimes the tenant allows strangers to use the phone, or some ask for a meal ticket which the tenants sometimes provide. The tenant has experience as a peace keeper in the military with skills to calm things without violence. On a number of occasions, police have returned to the rental property to thank the tenant for the way he handled things. A lot of people have emotional and mental issues and the tenant deals with them to the best of his ability and asks people to leave before things get out of hand. Numerous times people have asked to use the tenants' phone for emergencies, and the tenants have the only phone. The tenant has never called 911 except on one occasion where a lady said she had been raped. The tenant has a good rapport with police that stop at the rental unit, and they talk to the tenant regularly.

A neighbour told the tenant a few years ago that he would continue to call bylaw and police officers to make the tenant's life miserable, and most calls come from him.

Analysis

The *Residential Tenancy Act* permits a landlord to issue a notice to end a tenancy if certain terms of the tenancy agreement have been breached, or to apply for an Order of Possession if it would be unreasonable to wait for a 1 Month Notice to End Tenancy for Cause to take effect. In this case, the landlord has done both, and applies for an Order of Possession to take effect earlier than the notice would take effect. The *Act* also specifies that I can make such an order only if I am satisfied that the landlord has established that:

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

If there are other reasons to end the tenancy, the landlord must issue a notice to end the tenancy and may not end the tenancy earlier than prescribed.

The landlord submits that the issue in February, 2016 was a breach of a material term of the tenancy agreement, however the allegation of such a breach is not a reason for ending the tenancy earlier than a notice to end the tenancy would take effect.

In this case, there is no evidence of interference or disturbances, or any illegal activity by the tenants, and there are no other occupants of the residential property. I also find that there is no immediate threat to life and/or to property, and the only urgency is the Council meeting scheduled for next Monday.

I accept the testimony of the tenant that someone at the BC Access Centre advised that filing a dispute to the 1 Month Notice to End Tenancy for Cause would only provide a hearing date and one was already scheduled, so disputing it was not necessary. That is evidenced somewhat in the form served to the landlord by registered mail by the tenant.

The tenants' position is that the landlord is premature in issuing the notice to end the tenancy because City Council has not yet met on the issue nor has the rental property been declared nuisance property under the bylaw.

It is clear to me that the tenants have attempted to be Good Samaritans in the neighbourhood for quite some time. However, in their attempts to provide assistance to those who have so little, and considering the letter from the City and the letter from the RCMP, I find that the tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord and put the landlord's property at significant risk of being designated a nuisance property. That may require the landlord to pay for emergency and bylaw services. Even though the property has not been declared nuisance property, the risk is very real. I also find that landlord's property may be at significant risk.

The *Act* does not permit me to extend the time within which a tenant may apply to cancel a notice to end the tenancy beyond its effective date, and I find that the tenants have attempted to apply to cancel the 1 Month Notice to End Tenancy for Cause on January 4, 2017. The effective date of vacancy contained in the notice is February 1, 2017, and was served on the tenants on December 20, 2016. Because rent is payable on the 1st day of each month, the effective date of vacancy ought to read January 31, 2017.

I don't believe there is any indication that the landlord's property will be at further risk, nor will the health or safety or lawful right or interest of the landlord be any further jeopardized prior to January 31, 2017, and I find that the landlord has not established that the tenancy should end earlier. In the circumstances, I find that the landlord is entitled to an Order of Possession effective January 31, 2017, and I hereby grant an Order of Possession in favour of the landlord effective that date at 1:00 p.m.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective January 31, 2017 at 1:00 p.m. and the tenancy will end at that time.

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: January 11, 2017

Residential Tenancy Branch