



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated February 28, 2019.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant acknowledged the she received the one month Notice to End Tenancy was on February 28, 2019. Further she filed the Application for Dispute Resolution on March 14, 2019. She testified she personally served the landlord. The landlord acknowledged receipt of it on March 19, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated February 28, 2019?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on 2016. The latest tenancy agreement provided that the tenancy would start on September 1, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$925 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$445 on March 20, 2016.

The tenant vacated the rental unit on May 5, 2019. However, despite vacating the rental unit she stated that she wanted to proceed with the hearing.

The landlord gave the following evidence:

- The rental property is a 4-plex. He has received multiple complaints from the tenants in the other units about the Tenants abusive and disturbing behaviour especially when she is drinking
- The police have been called on many occasions. She was taken away in handcuffs on one occasion.
- She has had a number of roommates who left after being unable to live with her.
- The tenant did not pay the rent for April 2019 and May 2019.
- The tenant vacated the rental unit on May 5, 2018.
- At the tenant's request the landlord paid \$300 of the tenant's security deposit to a mover to help her move.
- The landlord referred to a number of pages of text messages and e-mails which evidence the challenges that have occurred.

Landlord's Witness #1 testified as follows:

- The tenant is extremely confrontational and abusive towards her.
- The tenant plays loud music at all hours of the day and night that significantly disturbs her.
- The tenant conduct towards her and her 12 year old son has created fear in her son and he is afraid to take out the garbage or go outside.
- She has had to leave home on many occasions because of the disturbances of the tenant.
- She has had to call the police on at least 9 occasions.
- The police took the tenant away in handcuffs on one occasion.

Landlord's Witness #2 testified as follows:

- She has lived in the rental property for 7 ½ months. The tenant has threatened to fight her and threatened to damage her car.
- The tenant has yelled at her mother (who lives with her) because she alleged her mother slammed the car door too loudly.
- The tenant is very unpredictable and volatile.
- On one occasion ordered me to go inside because she wanted to confront Witness #1.

The tenant gave the following evidence:

- She testified landlord's Witness #1 has made it her mission to have her evicted for the last 1 ½ years.
- She taken to talking to other residents in the 4-plex to turn against her. Landlord's witness #1 is concocting stories.
- She disagrees with the evidence of the landlord and his two witnesses. She testified that she never raises her voice.
- On one occasions Landlord's Witness #1 was caught eavesdropping.
- The witnesses and the landlord have bullied and harassed her.
- She was warned by another tenant about the conduct of Tenant's Witness #1.
- She was never charged after the incident she was taken away in handcuffs.
- She has suffered hardship and pain and suffering.
- She believes she has a human rights claim.
- Tenant's Witness #1 testified that the neighbour have treated the tenant badly.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- 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

Analysis:

After carefully considering all of the evidence I determined the landlord has sufficient cause to end the tenancy for the following reasons:

- The tenant acknowledged the she was served with the one month Notice to End Tenancy on February 28, 2018. She did not file the Application for Dispute Resolution until March 14, 2018. Section 47(4) provides as follows:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

An arbitrator has the jurisdiction to extend the time only in exceptional circumstances. The tenant did not request more time to make the Application. The tenant failed to provide evidence of exceptional circumstances. On that basis alone I determined that the Application of the Tenant should be dismissed.

- I determined the landlord has presented sufficient evidence to end the tenancy on the merits. I prefer the evidence of the landlord and the landlord's two witnesses when in conflict with the tenant. I am satisfied the tenant has been confrontational with the other tenants in the rental property especially when drinking. The tenant did not dispute that on one occasion she was removed from the rental property in handcuffs. She did not dispute the testimony of Landlord's Witness #1 that the police were called on 9 occasions relating to her behaviour. I am satisfied that the conduct of the tenant has significantly interfered with and unreasonably disturbed other occupants in the rental property.
- The tenant vacated the rental unit and has returned the keys to the landlord.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy and to recover the cost of the filing fee is dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession forthwith on being served with a copy of this order.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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: May 06, 2019

Residential Tenancy Branch