



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHILLIWACK KIWANIS HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	OPC FF
	Tenant:	CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on September 25, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession based on a One Month Notice to End Tenancy for Cause, dated September 9, 2019 (the “One Month Notice”); and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on September 19, 2019 (the “Tenant’s Application”). The Tenant applied for an order cancelling a cancelling the One Month Notice, pursuant to the *Act*.

The Landlord was represented at the hearing by T.P. and B.R., agents. The Tenant attended the hearing and was assisted by K.D., an advocate. T.P., B.R., and the Tenant provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, T.P. testified the Landlord’s Notice of Dispute Resolution Hearing package was served on the Tenant by registered mail. In addition, T.P. testified that the Landlord served a subsequent documentary evidence package on the Tenant by leaving a copy in the Tenant’s mailbox. The Tenant acknowledged receipt of both packages.

The Tenant testified the Tenant's Application package was served on the Landlord by priority post. T.P. acknowledged receipt of the package.

Neither party raised any issue with respect to service and receipt of the above documents. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the Tenant lives in the 3-bedroom, 1-bathroom rental unit with her three children. The tenancy began on September 1, 2017. Rent in the amount of \$590.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$317.50, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice. A Proof of Service document confirms the Landlord served the One Month Notice on the Tenant by leaving a copy in her mail slot or mail box on September 9, 2019. During the hearing, the Tenant confirmed she received the One Month Notice on September 11, 2019.

The One Month Notice was issued on the following bases:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Specifically, T.P. testified there are a number of issues involving the Tenant. T.P. provided a chronological account of his concerns. First, T.P. referred to issues with the Tenant's guest, J.G., which date back to January 2019. T.P. testified that J.G. is not a tenant and has been seen coming and going, and that he uses the rental property to store belongings and repair bikes. T.P. testified that he has asked J.G. to leave on numerous occasions. T.P. stated that he is aware of J.G.'s history and that is currently facing charges related to assault, theft, and breach of recognisance. On September 16, 2019, T.P. called the R.C.M.P. to attend the rental property because J.G. was there. T.P. testified that J.G. has recently been seen at the rental property on several occasions in November 2019. T.P. also testified that J.G. is receiving mail at the rental property.

Second, T.P. referred to a situation on September 3, 2019 when a deceased male, who was also not a tenant, was removed from the Tenant's rental unit.

Third, T.P. testified that a condition inspection of the Tenant's rental unit on September 12, 2019 revealed a unit in disarray.

Finally, T.P. testified that the Tenant was observed to have a dog in her rental unit on September 19, 2019, contrary to the tenancy agreement.

In reply, the Tenant testified that she lives in the rental unit with her three children and that J.G. has never lived with them. The Tenant also acknowledged that her rental unit was messy during the condition inspection but stated it was a result of raising three children and her own health concerns. The Tenant also acknowledged that someone died in his sleep while staying at her rental unit as alleged by the Landlord but that it should not be a basis for ending the tenancy. With respect to the Landlord's claim that the Tenant had a dog in the rental unit, the Tenant acknowledged that the dog belonged

to a guest who was attending her friend's funeral. The Tenant confirmed she does not own a dog. With respect to the claim that mail was sent to J.G. at the rental property, K.D. submitted that the correspondence, which was not submitted into evidence by the Landlord, was not mailed to the Tenant's rental unit.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find:

Section 47(1)(c) of the *Act* confirms that a landlord may take steps to end a tenancy when a tenant has allowed an unreasonable number of occupants in a rental unit. In this case, T.P. raised concerns about the frequent presence of J.G. at the rental property. The Tenant testified, and I accept, that J.G. does not live in the rental unit with the Tenant and her children. As a result, I find there is insufficient evidence before me to conclude there are an unreasonable number of occupants in the Tenant's rental unit.

In addition, section 47(1)(d) of the *Act* confirms that landlord may take steps to end a tenancy when a tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. On behalf of the Landlord, T.P. raised several concerns during his testimony.

With respect to the Landlord's concern about the frequent presence of J.G. at the rental property, it appears the concerns as expressed by T.P. are speculative rather than actual. T.P. made allegations of criminal activity that appear to be unrelated to the Tenant and the rental unit, and suggested there have been complaints from other tenants. However, I was not referred to any documentary evidence in support of criminal activity or to complaints received from other tenants. Although the Landlord's concerns may be justified, I was also not referred to any evidence to confirm that J.G.'s presence at the rental property caused a significant interference or unreasonable disturbance sufficient to end the tenancy.

With respect to the Landlord's concern about the death of the Tenant's friend in the rental unit, I find there is insufficient evidence before me to conclude that this event was related to the Tenant and the rental unit or was by anything other than a serious illness.

With respect to the Landlord's concern about the condition of the Tenant's rental unit, I accept that it was not well maintained during the condition inspection on September 12, 2019. The Tenant acknowledged as much. However, I find that section 47 of the *Act* permits a landlord to end a tenancy due to condition only when there is evidence that the condition of the rental unit jeopardizes the health or safety of the landlord or another occupant, puts the landlord's property at significant risk, or when the tenant has caused extraordinary damage. In this case, I was not referred to any documentary or photographic evidence that would allow me to conclude the condition of the rental unit posed a health or safety risk.

With respect to the Landlord's concerns about the presence of a dog in the rental unit, I accept the testimony of the Tenant who stated the dog belonged to a guest who was there to attend her friend's funeral, and that she does not own a dog. I note the Landlord's agents did not refer me to any documentary or photographic evidence to suggest otherwise.

To summarize, I find there is insufficient evidence before me that the presence of J.G. at the rental property, the death of the Tenant's friend in the rental unit, the condition of the rental unit, or the brief presence of a dog in the rental unit significantly interfered with or unreasonably disturbed another occupant or the landlord, or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. As a result, I order that the One Month Notice is cancelled, and that the tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

The Tenant's application is successful. I order that the One Month Notice is cancelled, and that the tenancy will continue until otherwise ended in accordance with the *Act*.

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: November 29, 2019

Residential Tenancy Branch