



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 822551

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Tenant,

Applicant

And

SALIENT INVESTMENTS LTD., Landlord,

Respondent

Regarding a rental unit at: s.22 Whalley Blvd., Surrey, BC

Date of Hearing: August 01, 2014, by conference call.

Date of Decision: August 01, 2014

Attending:

For the Landlord: Caroline Miller, Manager

For the Tenant: s.22 Tenant



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DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on March 01, 2014. On May 31, 2014, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice on June 11, 2014, which is not within the legislated time frame. However since the tenant had health issues and was just one day late, I allowed the tenant's application to dispute the notice.

The notice was served for the following reasons;

Tenant or a person permitted on the property by the tenant has:

- a. significantly interfered with or unreasonably disturbed another occupant or the landlord

The landlord testified that there have been several noise disturbances created by the tenant and/or ^{s.22} guests and the other occupants of the building have complained in writing, about the tenant's activities. The landlord described the sequence of events that led to the notice to end tenancy.

In the early hours of May 15, 2014, the assistant manager^{s.22} received two noise complaints by phone call from the occupants of the suites directly above and below the tenant.^{s.22} and the maintenance person^{s.22} visited the tenant. The door was opened by^{s.22} who was asked by^{s.22} to leave the rental unit. ^{s.22} stated in^{s.22} written submission that the tenant appeared to be intoxicated and was incoherent.^{s.22} swore at^{s.22} and slammed the door on them.

The police arrived and^{s.22} who was yelling loudly, left the property. The police informed the security guard that the tenant and^{s.22} visitor were intoxicated and the matter had been taken care of.

The tenant stated^{s.22} visitor was creating noise disturbances and would not leave the rental unit.^{s.22} stated that in the interest of the other occupants of the building^{s.22} called the police to have the visitor removed.

The landlord filed a copy of the security report,^{s.22} statement and the compliant written by the tenant in the unit below.

In the early morning hours of May 16, 2014 a noise disturbance was reported by the occupant of the unit below, to the security guard.^{s.22} reported that a couple were fighting and creating noise disturbances. The police attended. The landlord filed a copy of the security guard's report and the letter of complaint from the occupant of the unit below. The security report confirms that a couple was fighting inside the rental unit and that the police attended. No arrests were made.

The tenant stated that, that night,^{s.22} had a couple of friends over just in case the visitor from the previous night showed up. The tenant also stated that^{s.22} did not have any furniture which could have muted some of the sounds and because people left their windows open due to the weather, the music may have been heard by other occupants.

On May 18, 2014, the manager CM served the tenant with a warning letter and suggested that^{s.22} provide a notice to end the tenancy as the landlord found the noise disturbances unacceptable and in contravention of clause 15 of the lease.

On May 21, 2014, the tenant provided CM with a notice to end^{s.22} tenancy. This note was dated May 09, 2014 and was unsigned. The tenant also provided CM with a note that^{s.22} had found in^{s.22} mailbox which had a rude message to^{s.22} The landlord filed a copy of the tenant's notice to end tenancy. During the hearing, the tenant stated that the notice was just a draft and that^{s.22} had not signed it.

CM stated that a fire drill was in progress when the tenant gave her this notice and the tenant reeked of alcohol and was verbally abusive.

Later that day, on May 21, 2014 around 8:20pm, CM received a phone call from the tenant below complaining about loud music from the rental unit. CM states in her written submission that she visited the unit along with the maintenance person. The tenant had loud music playing and was found to be intoxicated and verbally abusive. CM stated that the tenant did turn the music down and they spoke for about 15-20 minutes. CM left the unit but received reports that after she left the unit, the tenant was on the balcony shouting at passersby. The landlord filed a copy of her report and the letter of complaint from the tenant below.

On May 31, 2014 the landlord served the tenant with the notice to end tenancy. Despite receiving the warning letter, verbal warnings and the notice to end tenancy, another incident occurred on June 07, 2014. Around midnight on June 07, CM received two phone messages from the occupants of the units above and below the rental unit. The callers stated that there was a lot of noise coming from the rental unit from loud music and people on the balcony. The callers urged the manager to do something about the problem as they had to go to work the next day.

The tenant's defense was that ^{s.22} has health issues and was ^{s.22} for two days on or about May 18, 2014. The tenant denied being intoxicated during the incidents mentioned above and stated that ^{s.22} does not drink in excess. The tenant felt that ^{s.22} did the right thing by calling the police to remove the misbehaving visitor on May 15.

The landlord was very clear that she wanted the tenancy to end and agreed to allow the tenancy to continue until August 08, even though the effective date of the notice was June 30, 2014.

Analysis:

In order to support the notice to end tenancy, the landlord must prove the reason for the notice to end tenancy. Based on the documentary evidence and the verbal testimony of both parties, I find that the tenant created noise disturbances and was verbally abusive to the landlord's staff. The tenant was given a written warning and verbal warnings, but the behavior continued after the warnings. The tenant was also served a notice to end tenancy and another incident occurred after the notice was served.

The documentary evidence filed by the landlord fully supports her verbal testimony regarding the noise complaints and the interactions between other staff members and the tenant. The detailed written log provides information about incidents that occurred and support the reasons for the notice to end tenancy.

Upon careful consideration of the evidence before me I find that the events of May and June 2014 involve noise disturbances that are serious enough to cause the other occupants of the building to voice their concerns in writing.

I further find that by providing daily log entries of activity in the rental complex, the landlord has proven that through the tenancy, the tenant has engaged in activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupants of the property.

Finally, I find that despite having received a written warning, verbal warnings and a notice to end tenancy, the tenant did not change^{s.22} behaviour and the noise disturbances continued. Therefore I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order.

The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and the tenancy will end. I grant the landlord an order of possession effective two days after service on the tenant.

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: August 01, 2014



E. Nazareth, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca

Residential Tenancy Branch

#RTB-136 (2011/07)





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Date: August 01, 2014

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Between

s.22

Tenant,

Applicant

And

SALIENT INVESTMENTS LTD., Landlord,

Respondent

Re: An application pursuant to section 47 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Whalley Blvd., Surrey, BC

ORDER

I AUTHORIZE AND COMMAND YOU, s.22

Tenant to deliver full and

peaceable vacant possession and occupation of the above noted rental unit to,

SALIENT INVESTMENTS LTD. , Landlord not later than **two (2) days** after service of this order upon you.

Dated: August 01, 2014

E. Nazareth, Arbitrator
Residential Tenancy Branch