

DECISION AND REASONS

Dispute codes: CNC, MNDC, LRE, LAT, O

Introduction

This was an application by the tenant to cancel a Notice to End Tenancy for cause and for other relief, including a monetary order and orders restricting the landlord's right to enter the rental unit. The hearing was conducted by conference call. The tenant and the landlord participated and the landlord was represented by an advocate.

Background and Evidence

The tenancy commenced some five years ago. The rental property is a house with three suites. The tenant lives in an adjacent suite to the landlord and her husband. There is a connecting door between the suites. In July, 2008 the landlord gave the tenant a form of mutual agreement to end tenancy and requested that she sign it. The form was accompanied by a letter from the landlord wherein she suggested that the tenant was incapable of living independently due to illness and addiction. The tenant refused to sign the form of agreement.

The landlord then gave the tenant a one month Notice to End Tenancy for cause. The Notice was dated August 11, 2008 and required the tenant to move by September 30, 2008; it is this Notice that the tenant has applied to cancel. The stated grounds for the Notice were 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
- put the landlord's property at significant risk

And that the tenant has:

- engaged in illegal activity that has, or is likely to :

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

The landlord further alleged that the tenant had:

- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

She also alleged that:

- Tenant's rental unit is part of an employment arrangement that has ended and the unit is required for a new employee
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant was addicted to drugs and prescription medications; she based her opinion on her self professed expertise working in the "addiction/alcoholism recovery and treatment industry". She referred to the tenant's "cognitive confusion" and her need for home care support. So far as actual specifics of the tenant's behaviour were concerned, the evidence was scanty. The landlord mentioned an incident when the tenant was said to have driven her car over the edge of a ravine on the property. The landlord said the tenant complained that someone was cutting a hole in the connecting wall to her unit when nothing of the sort was happening; one of the landlord's submissions the comment was made that the tenant: "seems overcome by an unreality that is typical of the effects of drug use." The landlord testified that the tenant had put her property at risk when she caused a toaster oven to catch fire and then had to throw the burning object out of her suite.

The landlord also contended, although there is apparently neither a written tenancy agreement nor any contract of employment, that the tenant has been the landlord's assistant property manager. For her services the tenant was remunerated by the landlord by keeping her rents low and by shared cable and telephone use. The accepted evidence at the hearing is that the telephone and cable services were in the name of the tenant and paid for by the tenant, but used by the landlord. In August,

2008 the tenant advised the landlord in writing that she was no longer to use her phone number for personal calls.

The landlord complained that the tenant has disturbed other occupants by affixing an alarm to her door that goes off sporadically without cause. The tenant testified that the alarm was placed there because the landlord and her husband were entering the rental unit without her permission. The landlord's husband suffers from what was referred to as "early dementia". The tenant testified that he regularly entered her suite without permission. The door connecting the tenant's suite to the landlord's had a lock on the tenant's side of the door. The landlord removed the lock and reversed it, such that the lock is now on the landlord's side of the door and the tenant is not able to lock the door. Both parties maintain that the other has entered their suite without permission.

Analysis and conclusion

I am not convinced by the landlord's suggestions that the tenant has an addiction problem, or that she needs home care and is incapable of looking after herself. The tenant did not demonstrate any lack of clarity during the hearing. According to the tenant and her advocate the tenant's doctor has scoffed at the suggestion that she cannot look after herself. A letter to that effect was submitted but not received at this office.

I find that there is insufficient evidence to support a finding that the tenant has ever been employed by the landlord or that she has received compensation from them for performing property management services. The landlord contended that the tenant failed to pay a pet deposit demanded of her. The first written request for a deposit was made in August 2008. The tenant has had a pet living with her from the inception of the tenancy. Section 20 of the Residential Tenancy Act provides that a landlord may not require a pet deposit at any time other than when the landlord and tenant enter into the tenancy agreement. There is no basis for the landlord's assertion that the tenant failed to pay a pet deposit within 30 days.

The tenant has provided cogent explanations of the occurrences concerning her car and the toaster oven. The tenant was attempting to negotiate a tight turn when she put the wheels of her car over the edge of an embankment. I consider the landlord's description of this event to be overblown. The tenant acted with alacrity to remove a toaster oven from the suite when it caught fire; there is no evidence that the tenant's negligence caused the fire. Neither of these episodes constitutes cause for ending the tenancy. The tenant heard the sound of cutting and vibration through the wall when the landlord was performing work. The tenant's perception that something was being done to the wall of her suite was entirely reasonable and was not evidence that she was overcome by a drug induced sense of unreality. The fact that the landlord has attempted to present these occurrences in such a way as to suggest that the tenant is somehow not competent cause me to view her evidence with suspicion.

The landlord alleged a multiplicity of grounds for ending the tenancy; I find that there is insufficient evidence for any of the grounds alleged to find that there is cause to end the tenancy. I direct that the Notice to End Tenancy dated August 11, 2008 be, and is hereby cancelled.

I do not make any award to the tenant for loss of enjoyment. Very little evidence was given to show that the tenant's enjoyment of the rental unit was impaired by the landlord's conduct. I make no order for the tenant to change the lock on the rental unit, but I direct the landlord to restore the lock to its original configuration whereby the tenant is able to lock the door to the rental unit. I further direct that the landlord comply with the provisions of the *Residential Tenancy Act* and *Residential Tenancy Regulation* with respect to written notice and entry into the tenant's rental unit.

Dated September 24, 2008.