



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

This matter dealt with an application by the tenant to cancel a notice to end tenancy for cause, as issued by the landlord on September 8, 2008. The landlord's notice was issued alleging a material breach of the tenancy agreement that was not corrected after the tenants were given written notice and time to take corrective action. The landlord also alleges that the tenants had also significantly interfered with or unreasonably disturbed another occupant or the landlord.

Both the landlord and the tenant appeared at the hearing, which was held via teleconference. The tenant's were assisted by a translator. Both parties were given an opportunity to provide oral evidence and I advised both parties that I would also consider their documentary evidence which had been submitted, in reaching my decision.

The landlord has requested an order of possession in the event that the tenant's application is unsuccessful.

Issue(s) to be Decided

Is there sufficient evidence to support the landlord's notice for cause and if so should an order of possession be granted?

Background and Evidence

The evidence submitted indicates that the tenants have resided in the rental unit for the last 10 years. The issues that the landlord allege as material breaches of the tenancy

agreement related to the mounting of satellite dishes and to the parking of a commercial vehicle within the complex.

In regards to the satellite dish, there is a policy in effect that limits the number of dishes per unit to one, as well as a policy of where the dish may be mounted. In this case, the parties are in agreement that the tenants had three dishes mounted on a fence. The landlord has submitted as evidence, copies of the satellite dish policy as well as warning letters from March, April and August 2008, addressed to the tenants, advising them that they are in contravention of the policy. After the tenants repeatedly failed to comply the landlord took action to remedy the situation. On September 5, 2008 the landlord gave the tenants written notice that they intended to remove the offending dishes. On September 8, 2008 the landlord's workers attended at the rental to remove the three dishes. The workers were met with a confrontation with one of the tenants that required them to retreat for fear for their personal safety.

The landlord has also submitted evidence in relation to repeated parking violations. The tenancy agreement specifically prohibits the parking of commercial vehicles in the complex. The landlord issued written warnings to the tenant in March, June, July and August 2008, and as of September 8, 2008 the tenant continued to contravene the tenancy agreement in regards to parking.

As a result of these repeated violations, the landlord has issued the notice to end tenancy for cause on September 8, 2008 with an effective date of October 31, 2008.

The tenant at the hearing states that the failure to comply with the landlord's repeated requests is due to a language barrier. The tenants state that the commercial vehicle has not been parked in the complex for at least two months. This conflicts with the evidence of the landlord that it was there on September 8, 2008. The tenant also states that all but one of the dishes have been removed. The landlord's evidence at the hearing is that two dishes are still mounted on the fence.

The landlord's evidence at the hearing was that she has attempted to get the tenants to comply by issuing numerous warning letters which appear to have been ignored. This has lead to the landlord having to exercise the notice to end tenancy as the only

alternative available. The landlord also disputes the issue of the language barrier as there has been regular face to face communication with one of the tenants and that communication has not been an issue.

Analysis

I find that the landlord has proven that the tenants have failed to comply with repeated warnings letters in regards to parking and the issue of satellite dishes. This issue is whether these are indeed material breaches of the tenancy agreement and if so are they significant enough to warrant ending the tenancy.

I recognize the concerns of the landlord that the issues affect the entire complex and the landlord must evenly enforce the terms of the tenancy agreement. The tenants on the other hand have stated that they are now in compliance and intend to continue to comply.

I am not convinced that the language issue as raised by the tenants is a valid excuse and find that the tenants have simply failed to take the matter seriously until a notice to end their tenancy was issued. The tenants should be aware that they face eviction for failure to comply and as such need to correct their behaviour when notified by the landlord. The tenants should seek to find non confrontational solutions to comply or they may find themselves once again in this situation.

Conclusion

At this point I find that the breaches of the tenancy agreement are not significant enough to warrant an end to this tenancy, but the tenants must take note that a continuation of these or other breaches may lead the landlord to again issue notices that may indeed be upheld. I have taken into consideration that the tenant alleges that they are now in compliance, but note that a continued pattern of non compliance by the tenant may indeed result in a different decision in the future based upon other evidence.

I cancel the notice to end tenancy and order that the tenancy is to continue.

I decline the applicants request to recover the filing fee.