



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC, OPB, OPC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession.

Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Did the tenant dispute the notice to end tenancy within the required timeframe?

Has the landlord established grounds to end this tenancy?

Background and Evidence

The parties agreed that the tenancy began on June 15, 2008. On September 15, 2008 the landlord served the tenant with a notice to end tenancy by posting the notice to his door. The tenant could not recall the date on which he first discovered the notice and applied for dispute resolution to set aside the notice on September 29. The notice alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has put the landlord's property at significant risk, 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 and has breached a material term of the tenancy agreement.

The landlord and witnesses testified that the tenant had committed a number of infractions over the course of the tenancy, moving without providing proper notice, including parking in a fire lane, using an excessive amount of water to wash his balcony, verbally assaulting other tenants and the landlord, having a dog in the rental unit in contravention of the terms of the tenancy and subletting the rental unit. The landlord entered into evidence a number of letters which had been sent to the tenant by the property manager with respect to the alleged infractions. The landlord's witnesses

testified that they had been told by the police that the police had spoken to people in the rental unit who confirmed that they were subletting the rental unit from the tenant and provided copies of reports indicating access to the building and to common areas of the building using the tenant's fob. The landlord provided a copy of a Craigslist advertisement which he claimed was placed by the tenant advertising for a roommate. The advertisement included photographs which the landlord claims are of the rental unit. The landlord's witnesses further testified that they had been told by other occupants of the building that the tenant had had verbal altercations with them and that they were afraid of the tenant. The landlord did not provide copies of police reports or statements from the other occupants who made allegations against the tenants. When asked about whether the dog was still living in the rental unit, the landlord and witnesses could not confirm whether the dog had been seen in the rental unit in recent days and acknowledged that the report of the dog living in the rental unit had come from other occupants of the building.

The tenant acknowledged having parked in the fire lane on one occasion and denied having a dog in the rental unit or having sublet the rental unit. With respect to the other allegations, the tenant demanded that the landlord prove the allegations through witnesses or copies of the police files. The tenant denied that the Craigslist advertisement was placed by him and further denied that the photographs depicted the rental unit.

Analysis

As a preliminary issue, I must determine whether the tenant has applied to set aside the notice to end tenancy within the 10 days prescribed by the Act. The tenant testified that he could not recall the date on which he received the notice to end tenancy and acknowledged that he was living in the rental unit throughout the month of September, entering and exiting the unit through the door on which the notice was posted. Although I found the tenant's answers to be evasive with respect to when he received the notice, in the absence of direct testimony respecting when he received the notice I must rely on the deeming provisions of the Act. Section 90(c) of the Act provides that documents posted on a door are deemed received on the third day after the documents were

posted. The notice is therefore deemed received by the tenant on September 18, which set the time to dispute the notice as September 28. As September 28 was a Sunday, a day on which the Residential Tenancy Branch was closed, the *Interpretation Act* provides that the time for the tenant to dispute the notice is extended to the next business day of the Branch, September 29. I find that the tenant disputed the notice within the statutorily prescribed timeframe.

Having reviewed the evidence and testimony of the parties, I find that the landlord has failed to prove that there are grounds to end this tenancy. The landlord and witnesses were able to offer little in the way of direct testimony, instead referring to hearsay statements from other occupants. In the absence of direct testimony from parties who have witnessed other people living in the rental unit or from police officers who could confirm conversations with the alleged subletting tenants, I find that the landlord has not proven that the tenant sublet the rental unit. I am not satisfied that the Craigslist advertisement was placed by the tenant. I find that the record of fob activity is not determinative of anything except that the tenant or someone he permitted to use his fob entered and exited the building and its common areas frequently. The landlord submitted no documentation indicating that the tenant agreed not to let anyone other than himself use the fob. Even if persons other than the tenant were using the fob on a regular basis, this does not establish that they are subletting the rental unit, but suggests that they are frequent guests. The landlord's reference to the statements of police officers who allegedly interviewed people inside the rental unit is hearsay and without supporting documentation or direct testimony from one of those officers, I cannot accept this hearsay evidence as determinative that the tenant is subletting.

As for the landlord's other allegations, I find that the landlord has not proven that a dog was staying in the rental unit. Again, no direct testimony from persons who had seen the animal was offered and no statements from neighbours or other witnesses was submitted into evidence. While the tenant acknowledged having parked in the fire lane on one occasion, I cannot find that this one act provides grounds to end the tenancy. The allegations regarding excessive use of water on the balcony has also not been substantiated by witnesses or affected neighbours who would have complained to the owner or strata council. In the same way, the allegations regarding the tenant's alleged

verbal assaults have not been substantiated by direct testimony from witnesses or the occupants who were allegedly verbally assaulted.

Conclusion

The landlord has failed to establish grounds to end this tenancy. The notice to end tenancy dated September 15, 2008 is set aside. As a result, the tenancy will continue. The landlord's application is dismissed. The tenant is entitled to recover the \$50.00 paid to bring his application and may deduct this sum from future rent owed to the landlord.

Dated October 29, 2008.