



Dispute Resolution Services

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

Decision

Dispute Codes: MT CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause and an extension of time to apply to cancel the notice to end tenancy. Because the tenant made his application within the required timeframe, I did not need to consider the issue of an extension of time.

Issue(s) to be Decided

Is the notice to end tenancy valid?

If so, is the landlord entitled to an order of possession, and for what effective date?

Background and Evidence

The tenancy began on February 1, 2008. On November 28, 2008 the landlord served the tenant with a notice to end tenancy for cause, and cited as reasons for ending the tenancy as follows:

- (1) the tenant or a person permitted on the property by the tenant has:
 - (a) significantly interfered with or unreasonably disturbed another occupant or the landlord
 - (b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - (c) put the landlord's property at significant risk;
- (2) the tenant has engaged in illegal activity that has, or is likely to:
 - (a) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

(b) jeopardize a lawful right or interest of another occupant or the landlord.

The evidence of the landlord regarding cause to end the tenancy was as follows. The tenant participated in an initial interview with the landlord before the tenancy commenced, and in that interview the tenant indicated that he had a drug addiction issue but he had gotten over it. In November 2008 the building manager began receiving complaints from other tenants about the tenant and his frequent guests, specifically the tenant or his guests were smoking in the common areas of the building, and making a lot of noise at all times of the day and night. The building manager's testimony was that he received three or four complaints in November and at least six complaints in December.

As a result of those complaints, the building manager investigated an activity log that records how many guests the tenant had been receiving, and he compared the entry times of the tenant and his guests against videotapes. The building manager found that on November 18, 2008 a guest of the tenant entered the building smoking a cigarette and then spitting or throwing up in the elevator. On November 19, 2008 the landlord sent the tenant a warning letter regarding this incident.

On November 21, 2008 the landlord then sent the tenant a second warning letter, in which the landlord stated that video footage showed the tenant himself clearly smoking inside the front lobby on November 1, 2008. In this letter the landlord stated that any further incidents of this nature would result in the landlord issuing a notice to end tenancy.

The landlord provided a written statement from one of the tenants on the same floor, who complained about the tenant's guests making excessive noise late at night and smoking on the elevator, as well as numerous people smoking in the tenant's suite and cigarette smoke entering the hallway because of the numerous comings and goings of the tenant's guests.

The landlord also provided several pages of activity logs to demonstrate the excessive

number of guests who had been attending the tenant's rental unit. One activity log, which ran from 11:15 pm on November 27, 2008 to 6:46 am November 28, 2008, appears to show that the tenant entered or permitted the entry of guests at least eight times throughout the night.

In the hearing the landlord requested an order of possession pursuant to the notice to end tenancy. The landlord also stated, however, that they may be willing to work out a settlement agreement with the tenant outside the context of the hearing.

The response of the tenant was as follows. The tenant acknowledged that he does not like to be alone at this time of year, and he therefore had several guests, whom he described as "homeless." The tenant stated that he was not told that there had been any complaints, and if he had been told he would have done something about it. The tenant stated that on November 1, 2008, he had entered the building with a cigarette in his mouth, but it was not lit. One of the tenant's advocates stated that he visits the tenant on a regular basis, and he has heard on more than one occasion fighting and noise from one of the other tenants on the same floor. Further evidence from one of the tenant's advocates was that the author of the written complaint has been known to make questionable complaints about several other tenants. The tenant's position is that the landlord has not provided adequate cause to support the notice to end tenancy, and that the tenant should be given more time to correct any problems.

Analysis

In considering all of the evidence, I find that the landlord has provided sufficient evidence that the tenant or the tenant's guests significantly interfered with or unreasonably disturbed other occupants, and therefore the notice to end tenancy is valid. The landlord requested an order of possession pursuant to the notice, and I am therefore required to grant the order of possession. In light of the landlord's willingness to work with the tenant toward a possible settlement of this matter, I determine that it is appropriate for the effective date of the order of possession to be March 31, 2009.

Conclusion

I dismiss the tenant's application.

I grant the landlord an order of possession, effective March 31, 2009. 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.

Dated January 08, 2009.