

Decision

Dispute Codes:

CNC

FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This Dispute Resolution Hearing was convened to deal with an Application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated December 5, 2008, and to recover the filing fee for the cost of this application.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether or not the Notice to End Tenancy for Cause dated December 5, 2008, should be cancelled.

Background and Evidence

The Landlord testified that he served the Notice to End Tenancy for Cause upon the Tenant by posting the Notice on the Tenant’s door on December 7, 2008.

The Tenant testified that she served the Application for Dispute Resolution dated December 12, 2008, on the Landlord by delivering it personally to the Landlord on December 13, 2008.

I reviewed the materials on the case file prior to the Hearing. Both parties were present at the hearing and gave affirmed evidence.

Landlord's testimony at the Hearing:

- The Tenant often has 20 to 40 people visiting or staying at the rental unit, which disturbs the other tenants in the building. The Tenant and her guests are constantly fighting with the other tenants and using abusive language in front of children.
- The Tenant or guests of the Tenant are smoking marijuana outside of the rental unit on the common property.
- The Landlord recently had to have the drain pipes unplugged due to the number of people using the washroom or kitchen facilities in the rental unit.
- The Tenant is allowing people to live in the laundry room, which is separate from the Tenant's suite. The Tenant sublet the laundry room for \$200.00 per month, without permission of the Landlord. The Tenant had removed the washer and dryer from the laundry room to make room for a couch and other furniture. The Tenant has removed wires from the laundry room. The other tenants of the building are therefore unable to do their laundry, which is a facility that is included in their tenancy agreements.
- The Landlord agreed to rent the rental unit to the Tenant and her two children, but there are four children living in the rental unit, along with the Tenant.
- The rental unit is approximately 500 square feet, with one bathroom and two bedrooms and is too small for one adult and four children.
- The Tenant has run extension cords throughout the rental unit and the laundry room for lighting and heaters, which is a fire hazard.

- The rent includes utilities, which were billed at \$285.00 for two months before the Tenant moved in. Since the Tenant moved in, the utility bill has gone up dramatically. The last utility bill was \$511.00 for two months use as a result of the number of unauthorized people living in the rental unit.
- The Tenant has parties and plays loud music every weekend which disturbs the other tenants in the building. The Landlord has received complaints from the other Tenants regarding the noise.
- The Landlord is concerned about his property being damaged, the fire hazard caused by the extension cords and excessive electricity charges, and the unhealthy living conditions because of the number of people staying at the rental unit. The Landlord wants the Tenant out of the property.

Tenant's testimony at the Hearing

- The Tenant denied that she has that many people visiting or staying at the property. She agreed that there are 5 people living in the rental unit. The Tenant submits that the Tenancy Agreement does not stipulate the number of children allowed to be living in the suite and does not name the children.
- The Tenant and her children/guests do not smoke marijuana. Marijuana is being smoked on the property, but not in her suite. It is the downstairs tenant who is smoking marijuana on the property.
- No one is living in the laundry room, which the Tenant says is for her use only. The Tenant denies renting out the laundry room for \$200.00 per month. She removed the washer and dryer from the laundry room because they don't work. She has told the Landlord that they need to be repaired, but he has not fixed them. Her children use the laundry room to "hang out in" and have their friends over to listen to hip hop music. None of the other tenants have complained to her about the noise.

- The Tenant agreed that the rental unit is very small for her and her children and stated that she plans to move out at the end of the school year.
- The Tenant agreed that hydro charges are included in the rent. The Tenant has asked the Landlord to fix the bathroom and the heating, but he has not done so. The extension cords are used to plug in heaters for her children because the regular heat in her suite does not work.

Analysis

The Landlord provided no corroborative evidence regarding the following reasons for the Notice to End Tenancy for cause, and therefore I make no findings with respect to the Landlord's claim that the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- Engaged in illegal activity;
- Caused extraordinary damage to the property;
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Sublet the rental unit without the Landlord's written consent.

The rental unit is approximately 500 square feet, with 2 bedrooms and 1 bathroom, which is, by the Tenant's own admission, too small for the number of people residing in the unit. In order to give her children more liveable space, the Tenant has taken possession of the laundry room and moved out the washer and dryer. The laundry room is separate from the rental unit and is not intended to be used as a living space.

The Landlord rented the unit to the Tenant on the understanding that there would be three people living there. Over-occupancy of rental units create health and safety

dangers to the occupants and their neighbours. These dangers include fire hazards and adverse impacts on the peace, comfort and safety of the occupants.

I find that there are an unreasonable number of occupants in the rental unit and the Landlord has proven cause to evict the Tenant on these grounds.

Furthermore, because of the number of people living in the rental unit, I find that the Landlord is not able to comply with section 32(1) of the Act. Section 32(1) states, in part:

“A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law”

There is considerable jeopardy placed on the Landlord and the other occupants of the building due to the use of electrical extension cords in the unit and the laundry room and therefore the Landlord has proven cause to evict the Tenant for seriously jeopardizing the health or safety of other occupants in the building and put the Landlord's property at significant risk. Therefore the Tenant's application to cancel the Notice to End Tenancy must be dismissed.

The Landlord stated at the Hearing that he wanted the Tenant to move out of the rental unit. Pursuant to section 55(1) of the Act, if I dismiss the Tenant's application to set aside the Notice to End Tenancy and the Landlord asks for an Order of Possession, I must grant the Order of Possession to the Landlord.

The Notice to End Tenancy is dated December 5, 2008 and indicates a move-out day of January 15, 2009. Section 47(2) of the Act states:

“A notice under this section must end the tenancy on a date that is:

(a) not earlier than one month after the date that it is received, and

(b) the day before the day in the month, or in the other period in which the tenancy is based, that the rent is payable under the tenancy agreement.

The Tenant was deemed to have been served with the Notice to End Tenancy on December 10, 2009. The rent was payable on the first of the month, and therefore I find that the One Month Notice to End Tenancy dated December 5, 2008, is effective January 31, 2009.

Conclusion

Under section 55 of the Act, and based on the above facts I find that the Landlord is entitled to an Order of Possession and I hereby issue the order effective January 31, 2009. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Tenant has not been successful in this application and I dismiss her claim to recover the filing fee for the cost of this application.

January 11, 2009
