

Dispute Resolution Services

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

Decision

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant to set aside a notice to end tenancy dated November 29, 2008 and effective December 31, 2008. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Does the landlord have grounds to end the tenancy?

Should the landlord be granted an order of possession?

Background and Evidence

The tenancy began approximately 6 years ago. The rental unit is in a four-plex and houses the tenant and her 24 year old son. On November 29, 2008 the property manager served the tenant with a one-month notice to end tenancy for cause. The notice made the following allegations:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; and
- The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34.

At the hearing the property manager advised that he was withdrawing the allegation that the tenant had assigned or sublet the rental unit.

The property manager testified that the tenant's son has been painting car parts in the

house and on the steps of the rental unit which has left spray paint on a roll of carpet which had to be discarded, on a stove and outside the unit on the steps, driveway and a retaining wall.

C.V., who also resides at the residential property, appeared as a witness for the landlord. C.V. testified that the tenant's son has been painting car parts in the basement and on the steps. C.V. testified that while she has never seen the son actually painting, she once came upon him when he was in the process of cleaning up after having painted. C.V. further testified that because she is asthmatic, the fumes from the paint have a severe effect on her and that she has had a verbal altercation with the tenant about the issue.

The property manager testified that he has had at least two conversations with the tenant about her son having painted inside and immediately outside the house and had advised her that the painting must stop as the fumes were offensive to other tenants and hazardous to the health of those who were asthmatic. The property manager further testified that the tenant had acknowledged to him that her son had been the one painting.

The owner testified that her father has spoken directly with the tenant's son and asked him to stop painting and that the son responded by swearing at him. The owner further testified that a roll of carpet which had been stored in the basement had to be discarded because of the damage caused by the paint. The owner estimated that there are hundreds of dollars in damage resulting from the painting.

The tenant initially denied any knowledge of painting, but at the end of the hearing stated that her son had painted a few times. The tenant acknowledged that she had spoken with the landlord about the painting and the fumes generated by the painting, but denied having acknowledged that her son had been the one painting. The tenant testified that in her opinion, the marks on the stove and carpet could be easily removed. The tenant further testified that she had spoken with her son about the paint on the stove and that he specifically denied having caused the damage. The tenant testified that her son has owned his car for approximately one year and that he is fastidious about caring for it. In her application for dispute resolution the tenant had reported that

C.V. would confirm that someone other than her son had caused the damage. The tenant testified that she asked C.V. to sign a document confirming that her son had not caused any damage, but that C.V. had refused. The tenant argued that because C.V. had not actually seen her son painting, there was not adequate proof that her son had been painting. The tenant acknowledged that she witnessed the owner speaking with her son about the painting and testified that she yelled at her son.

Analysis

The landlord bears the burden of proving on the balance of probabilities that there are grounds to end the tenancy. For the reasons that follow, I find that the landlord has met this burden.

Although the tenant initially denied having any knowledge of her son painting, her later testimony acknowledging that he painted a few times has persuaded me that her son was painting in the rental unit. I do not accept the tenant's argument that because C.V. never saw her son painting there is inadequate proof that he was the painter. C.V. found the tenant's son cleaning up after painting and there is no reason why the tenant's son would clean up after someone else. I draw an adverse inference from the failure of the tenant's son to provide testimony or an affidavit denying his involvement in painting. I find that the tenant's son was painting both inside and immediately outside the rental unit, causing damage and creating noxious fumes.

Based on the agreement of the parties that the property manager spoke with the tenant on a number of occasions about the painting, I find that the tenant was well aware that the fumes were irritating other tenants and that the paint was causing damage.

I find that the damage caused by the paint is not extraordinary to the degree that it supports an end of tenancy. However, I find that the blatant disregard to the obvious health risk to occupants of the residential property who are known to be asthmatic does constitute grounds to end the tenancy. I am satisfied that the fumes generated by the paint have seriously jeopardized the health of other occupants and have significantly interfered with the quiet enjoyment of other tenants.

Conclusion

The tenant's application to set aside the notice to end tenancy is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Accordingly, I so order. I find it appropriate to set the end of tenancy date at January 31, 2009. The tenant must be served with the order of possession. 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 07, 2009.