



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

2

DECISION

Dispute Codes:

CNC, FE

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.

I reviewed the evidence on the case file prior to the Hearing. All parties gave affirmed evidence and this Hearing proceeded on its merits.

Issue(s) to be Decided

This is the Tenant's application under Sections 47(4) and 72(1) of the Act to cancel a One Month notice to End Tenancy for Cause, and to recover the filing fee from the Landlord for the cost of this application.

Preliminary Matter

At the onset of the Hearing, I noted that name of the Landlord was spelled incorrectly on the Tenant's application. Pursuant to Section 64(3)(c) of the Act, I have amended the Tenant's application to reflect the correct spelling of the Landlord's name.

Background and evidence

The Landlord's agent personally served the Tenant with the Notice to End Tenancy for Cause on January 23, 2009 at the Tenant's residence.

The Tenant mailed the Notice of Hearing package to the Landlord and the Landlord's agent, by registered mail on January 29, 2009.

Tenant's evidence and testimony

The Tenant testified as follows:

- This is a long term tenancy. The Tenant has lived in the rental unit since 1994.
- The dispute is between the Landlord and the Tenant's room mate.
- The Tenant's room mate broke a glass door, but the Tenant has paid for the broken door.
- The Tenant wants to stay in the rental unit.
- The Tenant has recently been diagnosed with a medical condition. Moving at this time would be a hardship for the Tenant.
- If the Tenant is allowed to stay in the rental unit, she will ensure that her room mate moves out.

Landlord's evidence and testimony

The Landlord submitted the following evidence to the case file:

- Copy of the Notice to End Tenancy;
- Copy of e-mail dated January 17, 2009, from another tenant, complaining about the Tenant's room mate;
- Copy of handwritten letter of complaint dated June 6, 2008, from another tenant, complaining about the Tenant's room mate;
- Copy of handwritten note dated June 5 (no year), from another tenant, complaining about the Tenant's room mate;
- Copy of the Tenant's cheque in the amount of \$130.20 dated January 31, 2009, to the Landlord, regarding broken window; and

- Copy of Letter of Authorization dated January 31, 2009, signed by an authorized signatory of the Landlord, authorizing the Landlord's agent to act as agent of the Landlord in this matter.

The Landlord's agents testified as follows:

- The Tenant's room mate has been living in the rental unit for 12 years.
- The Landlord does not have a copy of the tenancy agreement regarding this tenancy, and does not know if the room mate is a tenant or an occupant.
- The Landlord did not name the room mate on the Notice to End Tenancy dated January 23, 2009.
- There have been a number of incidents involving harassment and violent behaviour towards other tenants, and the Tenant, by the Tenant's room mate, including an incident where the Tenant's room mate assaulted the Manager of the building.
- On January 17, 2009, the police were called because of a domestic incident. The Tenant's room mate was removed from the rental unit by the police.
- The Landlord is concerned about being held responsible by the other tenants if there is another incident and wants the Tenant's room mate to move out of the rental unit.
- The Landlord does not believe the Tenant will remove her room mate from the rental unit, as she is protective of her room mate. The room mate has left before but returns.

The Landlord asked for an Order of Possession but, due to the Tenant's medical condition, is satisfied with a possession date of April 30, 2009, in order to allow the Tenant time to make arrangements.

Analysis and Decision

The Act defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

The Tenant's room mate has lived in the rental unit for a period of 12 years, and the Landlord has been aware of his residency in the rental unit for 12 years. Therefore, I find that the Tenant's room mate is a tenant and not an occupant. This finding is not necessary in making a determination on this matter, but I am recording this in my decision, as I did make the finding during the hearing.

One of the reasons given by the Landlord on the Notice to End Tenancy is:

"the tenant, or a person permitted on the property by the tenant, has significantly interfered with or unreasonable disturbed another occupant or the landlord"

Based on the testimony of both parties and the evidence on the case file, I find that the Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonable disturbed another occupant or the Landlord. Therefore, I dismiss the Tenant's application to cancel the Notice to End Tenancy.

The Landlord is entitled to an immediate Order of Possession. The Landlord requested an Order of Possession for April 30, 2009, and I make that order.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy and to recover the filing fee from the Landlord is dismissed without leave to reapply.

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 April 30, 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.

March 12, 2009
