

Decision

Dispute Codes: CNC

Introduction

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

I reviewed a large amount of evidence on the case file prior to the Hearing. All parties gave affirmed evidence and the Hearing proceeded on its merits.

Issue(s) to be Decided

This is the Tenant's application to cancel a One Month Notice to End Tenancy for Cause, dated February 23, 2009, and effective March 31, 2009.

Background and Evidence

Service

The Landlord's agent admitted service of the Tenant's application. The Tenant admitted service of copies of the Landlord's evidence.

The Landlord issued a Notice to End Tenancy for Cause, alleging the following reasons:

1. The Tenant, or a person permitted on the property by the Tenant, has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
2. The Tenant, or a person permitted on the property by the Tenant, has put the Landlord's property at significant risk.

3. The Tenant 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.
4. The Tenant has caused extraordinary damage to the unit.
5. The Tenant has not done required repairs of damage to the unit.
6. The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant's evidence

The Tenant gave the following testimony:

- The Tenant has lived in the building for 16 years and didn't have any trouble until 2 years ago, when the building came under new administration. The Tenant stated that the new administration is corrupt and dishonest and he is tired of getting threatening warning letters. The Tenant stated that the administration is cooking up things in order to make him look bad.
- The Tenant stated that he only insulted them after he received the Notice to End Tenancy. He testified that he made no threats towards anyone and refrained from using abusive language.
- The Tenant testified that a Pest Inspector, who was inspecting the Tenant's rental unit for bed bug infestations, told the Tenant that there were no bed bugs in his unit.
- The Tenant stated that there was clutter in his room, but that the rental unit is small and the Landlord refused to allow him to store some items in his storage locker.
- The Tenant denied putting any of the Landlord's property at risk.
- The Tenant stated that he brushed up against the Landlord's agent DLF, and that they exchanged words, but he did not make any threats. The Tenant testified that he said he thought the Landlord's agents DLF and RN were puppets and

hypocrites. The Tenant testified that the police were called after the incident. The Tenant admitted to the police that he was upset because of the Notice to End Tenancy.

- The Tenant denied that he has caused extraordinary damage to the rental unit.
- The Tenant stated that he has done no damage that requires repairs. The Tenant stated that his rental unit is untidy and cluttered, but that he maintains it in a clean condition to the best of his ability. The Tenant testified that he paid a man to clean his oven and toilet. The Tenant stated that he has difficulty doing some of the cleaning due to health issues. The Tenant testified that he didn't follow through on some of the Landlord's concerns, but that his unit was merely untidy and there is no damage or pests in his unit. The Tenant stated that the photographs which were entered into evidence by the Landlord show exaggerated clutter and do not provide an accurate representation of his rental unit. The Tenant stated that maybe he was protesting by not cleaning his unit.
- The Tenant testified that he requested maintenance in his rental unit because his toilet was not working properly; the aerator on his tap in was broken; the lino was raised in the kitchen, causing a tripping hazard; and the door to his storage closet came off its track and was leaning against the wall. The Tenant stated that it took 3½ months for the maintenance man to come and address the Tenant's concerns. The Tenant stated that he believed the maintenance man came to repair the items only because he wanted to report back to administration about the state of his rental unit.

Landlord's evidence

The Landlord's agent RN gave the following testimony:

- The Landlord's agent testified that, contrary to the Tenant's submission, the problems with the Tenant are not new, and that there have been on-going problems for years. The Landlord's agent testified that, since May of 2005, there

have been 22 letters written to the Tenant from 8 different staff members about the lack of cleanliness in the Tenant's rental unit and the required preparation for controlling bed bugs in the rental property. The Landlord's agent testified that if there is no preparation done, the bed bugs spread to other rental units. The Landlord stated that the level of infestation in the Tenant's suite was so severe that it required 5 treatments. The Landlord stated that the usual course of eradication only requires 3 treatments. The Landlord testified that the Tenant did not cooperate by cleaning his rental unit, so the society agreed to have a professional cleaner assist the Tenant. The Landlord testified that the society paid for 2/3 of the cleaner's bill of \$450.00 and the Tenant paid the remaining 1/3 of the cost.

- The Landlord's agent testified that, due to the Tenant's lack of cleanliness and neglect, the bathroom lino is discoloured beside the toilet; the walls are stained with nicotine and grease; the range hood is very dirty and clogged with grease; and the carpet and lino in the hallway and bathroom will have to be replaced because it is in such poor condition.
- The Landlord's agent stated that the Tenant is minimizing his aggressive behaviour. The Landlord's agent testified that the Tenant has been behaving aggressively towards others since May of 1997. The Landlord's agent testified that the Tenant has left angry, harassing messages on his answering machine. The Landlord's agent testified that the Police have been called on two occasions as a result of the Tenant's verbally aggressive behaviour.
- The Landlord's agent testified that since the professional cleaner came in June of 2007, the society has issued nine letters asking the Tenant to clean his rental unit. The Landlord's agent testified that little, if any, cleaning has been done by the Tenant since February 12, 2008.
- The Landlord's agent testified that, in an effort to contain the problem until treatment is completed, it is policy not to move furniture or belongings from a tenant's suite to their lockers after a bed bug infestation, because of the

possibility of spreading live bed bugs or any remaining eggs that may remain in the tenant's property.

The Landlord's agent DLF gave the following testimony:

- The Landlord's agent stated that the Tenant is a procrastinator.
- The Landlord's agent testified that the Tenant's suite was the location of the first infestation of bed bugs, which spread to other suites in the rental property.
- The Landlord's agent testified that he was unable to do maintenance on the Tenant's toilet because of the lack of sanitation in the Tenant's bathroom. The Landlord's agent testified that he was unaware of any lifting linoleum in the Tenant's suite, but that now he is aware of it, he will address it.
- The Landlord's agent stated that the Tenant has a different perception of what is clean and that the Tenant's rental unit is filthy, with grease on the walls and in the carpet.
- The Landlord's agent stated that the Tenant always tries to deflect the issue of lack of cleanliness into something else (a vendetta against the Tenant by members of the housing society).
- The Landlord's agent testified that the Tenant is verbally abusive with the members of the housing society.

The Landlord's agent, RN, requested an Order of Possession.

Analysis

I have carefully considered the oral submissions of the parties, as well as the evidence provided by the Landlord, including:

- a CD of telephone messages left on the Landlord's agents' answering machines;
- photographs of the Tenant's rental unit;
- a copy of the tenancy agreement and guidelines for tenancy;

- a copy of the Notice to End Tenancy;
- 25 letters written by 7 different people dating from May 10, 2005 to January 29, 2009 regarding the lack of cleanliness and requirement for the Tenant to prepare for control of bed bug infestations;
- 8 incident reports regarding the Tenant's alleged harassment of staff.

In a letter dated February 17, 2009, an inspector from a pest control company wrote that the level of clutter in the Tenant's suite precluded him from doing an accurate inspection of the suite. Furthermore, the inspector stated that the perimeter baseboards need cleaning in order to determine whether existing signs of bed bugs are old or new. The inspector states that the walls are coated with grease which attracts cockroaches and that the suite needs cleaning to improve the sanitary condition to help in fighting pests and vermin. The Tenant has acknowledged that he has not attended to the cleaning of his suite. I find that the Tenant has seriously jeopardized the health or safety of another occupant or the Landlord.

The CD contains 5 messages containing vulgar and profane language by the Tenant to the recipient. The messages were recorded within a two day period from February 23 to February 24, 2009. I find that these messages were harassing in nature and that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Section 32(2) and (3) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and to repair damage caused by the actions or neglect of the tenant. I find that the Tenant has breached Section 32 of the Act by failing to maintain reasonable health, cleanliness and sanitary standards in his rental unit. This is a material term of the tenancy agreement.

The Tenant's application to cancel the Notice to End Tenancy is dismissed. The Landlord's agent requested an Order of Possession and I make that order, effective 2 days from service of the Order on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to Section 55 of the Residential Tenancy Act, I grant the Landlord an Order of Possession effective two days from service of the order. 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.

April 27, 2009
