

Decision

Dispute Codes: CNC

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The tenant, the landlord and a witness for the landlord all participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an order of possession, and if so, for what date?

Background and Evidence

The tenancy began in September 2007. The rental unit is a room in a house. The tenant shares a kitchen and bathroom with another tenant across the hall from her. A married couple rents another unit upstairs.

The landlord's evidence was that on May 30, 2009 the landlord attended at the tenant's back door with the intention of serving on the tenant a one month notice to end tenancy for cause. There was no answer, but the landlord's son saw the tenant leave through a window. The landlord reached inside the open window and left the notice on the tenant's table. The tenant's testimony was that she found the notice to end tenancy on June 5, 2009.

The landlord sought to end the tenancy on the grounds that the tenant has unreasonably disturbed other occupants, and the tenant has not done required repairs

of damage to the rental unit or site. This tenancy has been subject to two previous dispute resolution hearings, one on October 22, 2008 and the other on April 16, 2009. In the hearing on April 16, 2009 the tenant agreed to be extra mindful to not slam doors or close doors noisily, and to be mindful of the other tenants, to the best of her ability, when feeling compelled to yell or scream. The testimony of the landlord's witness, who is one of the upstairs tenants, was that within 24 hours of the April hearing, the tenant was slamming doors again. The police were called twice because the tenant was slamming doors and screaming. The tenant has repeatedly jeopardized the security of the household by leaving the back gate and basement door open. The tenant has also done \$900 to \$1000 worth of damage to the property and has not paid for the repairs. In the hearing the landlord requested an order of possession.

The tenant's response was that she has Tourette Syndrome, which causes her to swear out loud without being aware of it. The tenant did not provide any supporting evidence such as a doctor's note to provide proof of her condition. The tenant said that the Tourette Syndrome would not cause her to slam doors; however, the upstairs tenant's claim that she "slams" doors is mostly an exaggeration or question of interpretation.

Analysis

I find, on consideration of all of the evidence, that the landlord has adequately proven that the tenant unreasonably disturbed other occupants. The tenant did not provide supporting evidence of Tourette Syndrome, and she said that slamming doors is not a symptom of Tourette's. Further, in the hearing on April 16, 2009, the tenant agreed to be extra mindful to not slam doors or close them noisily. I accept the upstairs tenant's testimony that the tenant began slamming doors again almost immediately after agreeing not to do so. I therefore uphold the notice to end tenancy.

The landlord requested and is entitled to an order of possession. Service of the notice to end tenancy through a window is not proper service. I accept the tenant's evidence

that she received the notice on June 5, 2009, and the effective date of the end of the tenancy is therefore corrected to July 31, 2009.

Conclusion

The tenant's application is dismissed.

I find that the landlord is entitled to an order of possession. 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 June 24, 2009.