Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, LRE, FF

Introduction

This hearing was scheduled to hear the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause, suspend or set conditions on the landlord's right to enter the rental unit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard.

Issues(s) to be Decided

1. Have sufficient grounds been established to end the tenancy for cause?
2. Are additional restrictions on the landlord's right to enter the rental unit required?
3. Award of the filing fee.

Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The tenancy commenced approximately 4 ½ years ago. The building manager and the tenant are father and son. There is no written tenancy agreement. Approximately 1 ½ years ago the tenant acquired aquariums and has four aquariums filled with water in the rental unit currently. On May 7, 2009 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause (the Notice). The Notice has an effective date of June 30, 2009 and indicates the reasons for ending the tenancy are:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord

- put the landlord's property at significant risk

- Tenant has caused extraordinary damage to the unit/site or property/park

The building manager testified that the main reason for ending the tenancy is the tenant's failure to remove the aquariums from the rental unit. There is concern that the aquariums will overflow and damage the business below the rental unit. The landlord submitted a letter dated June 10, 2009 as evidence to the Residential Tenancy Branch but not upon the tenant. The tenant acknowledged receiving the letter and agreed that I could read it for the tenant's response. The letter states that the *Residential Tenancy Act* prohibits a tenant from bringing in waterbeds, aquariums, or other property that is liquid filled without the landlord's prior consent. The letter states the tenant has breached the building rules and must remove the aquariums by June 20th or else the tenant will be served with an "eviction" notice.

The building manager testified that another requirement of the verbal tenancy agreement was that the tenant have a job. Other complaints the building manager had were that the tenant or his guest do laundry in the early morning hours, do not adequately clean the bathroom, do not have tenant's insurance, and the tenant has several and frequent guests. The landlord acknowledged that he had one verbal complaint about the late night laundry from another tenant and that the tenants living above the rental unit had not made any complaints about the tenant or his guests.

The tenant testified that the building manager has served the tenant with the Notice because he is upset with the tenant and this is not the first time he has been threatened with eviction. The tenant stated that the building manager tries to collect rent in the morning hours of the 1st day of the month and his girlfriend has paid some of his rent before but there is insufficient evidence the rent is repeatedly late. The tenant acquired the aquariums 1 ½ years ago and there is no term in their tenancy agreement that

prohibits them. The tenant attributed the issue with the aquariums as just an excuse for the tenancy to end. The tenant acknowledged he asked his father to ensure the pumps restarted in the event of a power failure but that he was not putting the property at significant risk. The tenant's girlfriend acknowledged doing laundry late at night on one occasion as she was leaving town the next morning.

Another issues discussed during the hearing included the requirement for a written tenancy agreement. The parties were encouraged to meet before the end of June 2009 to sign a tenancy agreement and it was suggested that the standard tenancy agreement published by the Residential Tenancy Branch may be one that both parties can agree to sign. The parties could not agree whether the tenant's girlfriend would have to be named as a tenant. The landlord was informed that the Act does not prohibit a tenant from having guests or occupants. However, if there are an excessive number of occupants in a rental unit a landlord may end the tenancy for cause. In this case, it is improbable that one additional occupant would be considered excessive. The tenant was informed that the tenant is responsible for the behaviour of his guests or occupants and that if those guests or occupants unreasonably disturb or damage the landlord's property the tenancy may end for cause.

The tenants and the witness testified that the building manager had removed the witness' bike and other belongings from the building and put them on the street. The tenant also cited improper entry or requests to enter the rental unit. Discussion ensued about the landlord's restricted right to enter the rental unit. The tenant did not seem aware of the limitations imposed upon landlords by the Act and those restrictions will be provided as part of this decision for the tenant to enforce.

Analysis

The Act requires that all tenancy agreements be in writing and contain certain provisions. The Act recognizes verbal terms in the definition of tenancy agreement. Where verbal terms are clear and in situations where both the landlord and tenant agree, there is no reason why such terms can be enforced. That being said, it is evident that, in relying on memory alone, the parties may end up interpreting verbal terms in drastically different ways. Where certain issues and expectations are verbally established between the parties, these terms are always at risk of being perceived in a subjective way by each individual. Obviously, by their nature, verbal terms are virtually impossible for a third party to interpret in order to resolve disputes as they arise. Moreover, where there is no tenancy agreement, the agreement is missing key provisions, or terms in an agreement do not comply with the Act, then a Dispute Resolution Officer will have no choice but to base deliberations on provisions contained in the *Residential Tenancy Act* by default and not on the purported verbal agreement.

With respect to ending a tenancy, the onus or burden of proof is on the landlord show there are sufficient grounds to end the tenancy. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof on a balance of probabilities.

While there is the potential for any aquarium or any water filled item to leak, if the tenant maintains the aquariums in a responsible fashion, the risk is minimized. I have not heard evidence that the tenant has failed to maintain the pumps and aquariums adequately. Also, the landlord's letter of June 10, 2009 is highly inaccurate. The *Residential Tenancy Act* does not prohibit a tenant from acquiring waterbeds or aquariums. Since there is no evidence that the parties had come to an agreement that

the tenant was prohibited the tenant from having aquariums, I do not find a breach of the tenancy agreement.

Based on the verbal testimony I heard, I am not satisfied the tenant was required to acquire tenant's insurance as a term of his tenancy agreement. While have tenant's insurance is advisable, it is not a basis for ending the tenancy in this case. The tenant is informed that any damage caused to the rental unit or building as a result of a leak from the aquariums will be his responsibility to repair or compensate the landlord accordingly.

Other than one verbal complaint about laundry being done late at night one time, I did not hear of any other complaints from any other occupants about the tenant's behaviour or noise coming from the tenant's guests; therefore, I am not satisfied the tenant, or any person permitted on the property, has unreasonably disturbed other occupants or the landlord.

I was not provided evidence that the tenant repeatedly paid rent late. A tenant has until the end of the day when the rent is due to pay the rent. Furthermore, it is of no consequence to the landlord where the money for rent originates and the landlord cannot enforce a term that the tenant acquire and maintain a job.

In light of the above, I find that the landlord did not provide sufficient evidence to demonstrate that there are grounds to end the tenancy for cause. Therefore, I cancel and set aside the Notice to End Tenancy issued on May 7, 2009.

With respect to the landlord's restricted right to enter the rental unit, the Act provides:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[emphasis added]

The above limitations on the landlord's right to enter the rental unit are provided to both parties to comply and enforce as necessary. I was provided insufficient evidence that the building manager has violated section 29 to date; however, should the landlord violate the restrictions as outlined above in the future, the tenant is at liberty to file another Application for Dispute Resolution to seek remedy.

The building manager was informed during the hearing that he does not have the right to remove lawfully stored items from the building. Where a tenant is provided storage facilities for bikes and other belongings he is free to use those areas for storage, including storage of items belonging to his girlfriend, unless specifically prohibited from using the facilities for belongings of other people in the tenancy agreement. Since I was not provided evidence that there is such a term in the tenancy agreement, the tenant may store his girlfriend's belongings in the storage facilities provided to the tenant.

In conclusion, the parties are highly encouraged to sign a tenancy agreement. The standard tenancy agreement can be found under forms at www.rto.gov.bc.ca. The parties are reminded that a tenancy agreement is to reflect to terms the parties agree with and must not be imposed on one another. Landlords and tenants are not permitted to contract out of the Act or to agree to terms that contradict the provisions of the Act. A copy of *A Guide for Landlords and Tenants in British Columbia* is enclosed with this decision for each party's reference.

As the landlord did not establish sufficient grounds to end the tenancy for cause, the tenant is awarded the filing fee paid to dispute the Notice. The tenant is hereby authorized to deduct $50.00 from next month's rent payment in satisfaction of this award and the landlord must consider the rent to be in full.

Conclusion

The Notice to End Tenancy issued May 7, 2009 is cancelled with the effect that this tenancy shall continue.

The tenant is awarded the filing fee and is authorized to deduct $50.00 from his next month's rent payment in satisfaction of this award.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 17, 2009.

Dispute Resolution Officer