



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's request to cancel a Notice to End Tenancy for Cause and Orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties were represented at the hearing and were provided an opportunity to be heard.

Issues(s) to be Decided

1. Has the landlord established sufficient grounds to end the tenancy for cause?
2. Has the tenant established a need for orders for the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The landlord testified that she has just taken over management of the rental property from the former property manager. The Notice to End Tenancy was issued by the former property manager, thus the landlord's first hand information was somewhat limited.

I heard undisputed testimony that the tenancy commenced in December 2003. The tenant currently pays rent of \$1,000.00 on the 1st day of the month. On April 22, 2009 the former property manager served the tenant's 18 year old son with the *1 Month Notice to End Tenancy for Cause* (the Notice) that is the subject of this hearing. The Notice indicates an effective date of May 31, 2009 and the reasons for ending the tenancy are that the:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- Tenant has caused extraordinary damage to the unit or property.

The landlord testified that she was informed that the reasons for serving the Notice were that a window in the rental unit was broken, a car has been parked on the grass which is against municipal by-laws, there is garbage in the yard and many people come and go from the property. The landlord acknowledged that the tenant had repaired the window and that the landlord had no documentation to indicate the tenant had been notified of any breaches in writing.

The tenant explained that the window was broken by a Halloween prankster and although it was not her fault she took responsibility and repaired it. The tenant testified the car has been parked where it is since the beginning of the tenancy but the tenant is willing to relocate it. The tenant testified that she has already taken care of much of the garbage around the property.

Both parties agreed that the landlord had authorized the tenant to withhold June's rent until such time the outcome of this hearing was determined and both parties agreed that the tenant would make immediate payment and that it would not be considered late. The landlord acknowledged that the tenant is a long term tenant and has always paid her rent on time and in full.

Analysis

Upon hearing the testimony of the parties I find the Notice was not served upon the tenant in a manner that complies with the Act. Section 88 of the Act provides for ways a tenant must be served a document. A landlord may leave a document with an adult person who apparently resides with the tenant. The age of majority in British Columbia

is 19 years old, thus I have concluded that the property manager served a minor living at the rental unit and service upon a minor living with a tenant is not sufficient for purposes of the Act.

I also find the reasons for issuing the Notice not indicative of extraordinary damage or activity that would place the landlord's property at significant risk. Rather, issues pertaining to garbage and parking are best described as possible breaches of the Act or tenancy agreement. Breaches of the Act or tenancy should be addressed by first notifying the tenant in writing and providing the tenant with an opportunity to correct the breach within a reasonable amount of time, usually 30 days. If the tenant does not comply the landlord may be entitled to end the tenancy for a breach of a material term. Alternatively, the landlord could seek dispute resolution and request an Order from a Dispute Resolution Officer for compliance. In this case, I was not provided sufficient evidence that the former property manager tried to resolve the parking issues or garbage issues with the tenant prior to serving a Notice to end the tenancy.

Where a tenant, or a person permitted on the property by the tenant, damages the property the tenant is responsible for repairing the damage. In this case, the tenant has repaired the broken window and it is no longer an issue.

Finally, there is no evidence that people coming and going from the property have caused the property to be at significant risk.

In summary, I find the former property manager issued the Notice to End Tenancy prematurely or for reasons without merit and the former property manager failed to sufficiently serve the Notice upon the tenant in a manner that complies with the Act. For these reasons, the Notice is cancelled and set aside. The Notice has no effect on either party and the tenancy continues.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

With respect to the tenant's request for compliance from the landlord, I did not hear any evidence that would satisfy me that there is a need for Order against the landlord. I am of the opinion cancelling the Notice to End Tenancy is the result the tenant is seeking with this hearing.

Conclusion

The Notice to End Tenancy is cancelled with the effect that this tenancy continues.

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 04, 2009.

Dispute Resolution Officer