



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, AS, FF

Introduction

This hearing was scheduled to deal with the tenant's application for authorization to assign or sublet the rental unit and recover the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

At the commencement of the hearing, the tenant stated that she intended to dispute the *1 Month Notice to End Tenancy for Cause* that was submitted with her application; however, the appropriate box was not checked when the application was completed. I accepted the tenant's request for amendment as it was apparent to all parties that the Notice to End Tenancy was the primary issue for this hearing.

Issues(s) to be Decided

1. Has the landlord established that the tenancy should end for cause?
2. Are there grounds to cancel the Notice to End Tenancy?
3. Mutual agreement between the parties.
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony, I make the following findings. The tenancy between the landlord and tenant commenced October 1, 2008. The tenant pays rent of \$900.00 on the 1st day of every month. The rental unit is one-half of a side-by-side duplex with an unfinished basement. The landlord also owns and rents the other side of the duplex; however, the other side of the duplex has been vacant for the past few months. On April 20, 2009 the landlord personally served the tenant with a *1 Month*

Notice to End Tenancy for Cause (the Notice). The Notice indicates an effective date of May 20, 2009 and the reasons for ending the tenancy as the:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property,
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord,
 - Jeopardize a lawful right or interest of another occupant or the landlord;and,
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that the tenants in the other side of the duplex gave their notice to vacate due to cigarette and marijuana smoke infiltrating their unit, suspected drug activity, three unknown males living at the rental unit and concern for their safety. The landlord read a statement written by those tenants as evidence for the hearing. The landlord also testified that other neighbours reported suspected drug activity coming from the rental unit.

The landlord submitted that an adult male is residing in the basement which is a violation of the tenancy agreement and building laws as the basement is not intended to be living accommodation and does not provide sufficient fire protection. The landlord testified that he learned of the male occupying the basement when he attended the property a couple of days before issuing the Notice. The landlord also submitted that the tenant's boyfriend is residing in the rental unit which is a violation of the tenancy

agreement. The landlord acknowledged that he had not provided the tenant with a written warning letter concerning the additional occupants before issuing the Notice.

The tenant responded to the landlord's assertions by testifying that the tenancy agreement does not prohibit smoking in the rental unit. The tenant denied any drug activity in the rental unit. The tenant acknowledged her boyfriend visits her often but denied that he resides at the rental unit. The tenant testified that her male friend lives downstairs to help her afford the rent since her government assistance was reduced when her son was been placed in foster care. The tenant acknowledged that the neighbours and police have visited and watched the rental unit and the Ministry for Children and Families had investigated the household. The tenant explained that people coming to the house with money and leaving with bags may have been buying items from her that she has been selling on the internet and that the Ministry of Children and Families did not find drug activity.

The landlord testified that the Ministry of Children and Families investigated the tenant after the tenant was served with the Notice and that since the Notice was served the amount of traffic and suspicious activity at the rental unit had subsided. The parties both testified that the landlord had served the tenant with a *2 Month Notice to End Tenancy for Landlord's Use of Property* on May 28, 2009.

Discussion ensued regarding the landlord's burden to prove the tenant has given the landlord cause to end the tenancy is based on the balance of probabilities and is not the same as the criminal standard of proof which is beyond a reasonable doubt. Rather, the landlord only has to provide sufficient evidence to satisfy me that his version of the events is more likely, say more than 50%, than the tenant's version of the events.

A mutual agreement to end the tenancy was facilitated and the parties were able to agree on the following terms:

1. The tenancy shall end on June 30, 2009 by mutual agreement.
2. The tenant will vacate the rental unit by June 30, 2009.
3. The tenant has paid rent for the month of June 2009 and will not receive a refund of that rent or any other compensation from the landlord with respect to the *2 Month Notice to End Tenancy for Landlord's Use of Property* served upon the tenant.

Analysis

I accept the mutual agreement reached between the parties and make it binding upon both of the parties. The landlord is provided with an Order of Possession effective June 30, 2009. To enforce the Order of Possession the landlord must serve it upon the tenant and may file it in The Supreme Court of British Columbia to enforce as an order of that court.

In recognition of the mutual agreement between the parties, the *2 Month to End Tenancy for Landlord's Use of Property* is cancelled and of no effect on either party.

I make no award to the tenant for recovery of the filing fee.

Conclusion

The tenancy ends June 30, 2009 by mutual agreement. The landlord is provided with an Order of Possession effective June 30, 2009.



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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