



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC, LAT, FF

Introduction

This hearing dealt with the tenant's application (amended June 8, 2009) for cancellation of the landlord's notice to end tenancy for cause, authorization to change the locks on the rental unit, and recovery of the filing fee for this application. At the outset of the hearing the tenant gave verbal confirmation that these are the exclusive matters presently before me. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above

Background and Evidence

There is no copy of the written residential tenancy agreement in evidence which is said to have been entered into by the parties. This is a month-to-month tenancy which the parties agree began on or around June 7, 2007. Rent in the amount of \$590.00 is payable on the first day of the month, and a security deposit of \$300.00 was collected at the start of tenancy. The building which houses the rental unit is a two-storied structure; the upstairs comprises what are two separate three bedroom units, while the downstairs comprises what are four separate one bedroom units. The subject unit is one of the four downstairs units.

The landlord issued a 1 month notice to end tenancy for cause. The notice was originally dated June 12, 2009 in error. The landlord indicated that the notice should have been dated May 13, 2009. On his application for dispute resolution the tenant

noted his receipt of the notice on May 12, 2009. After being served with the notice the tenant made application for dispute resolution on May 14, 2009.

Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

significantly interfered with or unreasonably disturbed another occupant or the landlord

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

Evidence submitted by the landlord includes an affidavit sworn by a former tenant, "Ms. A." Among other things, Ms. A describes occasions when she visited with the tenant, smoked marijuana with the tenant, ate with the tenant, and accepted over \$300.00 from the tenant for repairs to her car. Ms. A also identifies what she considered were inappropriate or suggestive comments made by the tenant and came to suspect that he may be "spying" on her. It is understood from Ms. A's affidavit that personal discomfort eventually arose for her from her association with the tenant, and that this led her to vacate her unit on short notice.

In addition to comments concerning the tenant's marijuana use in Ms. A's affidavit, the landlord submitted a copy of an e-mail dated March 23, 2009 from a recent guest in one of the two upstairs units in the building. In part, the e-mail reads as follows:

....our stay in your home this year was ruined because your tenant downstairs was regularly smoking marijuana. It was such a strong odor that we could smell it from inside our suite. I know you enforce a "no smoking" policy inside all your units which is why we book with you each year. My youngest son is very allergic to smoke and we had to constantly air out our suite by opening the doors and windows so that he wouldn't have a reaction. Each time your tenant started

smoking my wife would develop severe headaches so she was basically relegated to either spending time in the upstairs bedroom with the door closed and the window open or at the dining room table with the patio door open.

Further to disputing that the landlord has cause to end his tenancy, the tenant seeks an order permitting him to change the locks on the unit. This aspect of the application appears to arise from the tenant's suspicion of "unlawful entry & theft of property," presumably on the part of either the landlord and / or her agent(s).

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause. Within 10 days after receiving the notice the tenant applied for dispute resolution.

Section 47 of the Act addresses **Landlord's notice: cause**. Specifically, where it concerns the landlord's notice in the circumstances of this dispute, section 47(1)(d)(i) and 47(1)(e)(ii) provide as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or...

Residential Tenancy Policy Guideline # 6 addresses **Right to Quiet Enjoyment**. In part, this guideline states:

- **Basis for a finding of breach of quiet enjoyment**

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form the basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or

- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

- **Harassment**

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.” As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment.

There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.

Residential Tenancy Policy Guideline # 32 addresses **Illegal Activities**. In part, this guideline provides:

The term “illegal activity” would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord’s property, or other occupants of the residential property.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord’s property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord’s

property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

On the other hand, a very small marijuana grow operation, involving only one or two plants, grown exclusively for personal use, might form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.

The weight I am able to give to Ms. A's affidavit and the landlord's guest's e-mail is limited. Neither individual was present at the hearing to testify or be cross examined by the tenant. The tenant asserts that Ms. A had personal reasons for vacating the unit which had nothing to do with him. It appears from Ms. A's affidavit that she voluntarily associated with the tenant and that an acquaintance evolved. While she objected to certain of what she considered were his suggestive comments and behaviours, there is insufficient evidence before me to conclude that the tenant "significantly interfered" with Ms. A, "unreasonably disturbed" her, or that his conduct or behaviour was pivotal in her decision to vacate her unit.

As for the concern identified by the landlord's guest about marijuana use, while it is implicit that this problem was directly the result of the tenant's use of marijuana, in his e-mail the guest does not describe the tenant, or name the tenant, or specifically identify which of the four downstairs units he considers was the source of the problem.

Further, there is presently an absence of allegations sufficient to demonstrate the existence of a pattern of repeated and allegedly problematic behaviours or conduct on the part of the tenant. Specifically, the source of complaints is limited to one former tenant and one former guest; there is no evidence before me of complaints about the tenant from current or other former residents, neighbours or other guests.

The onus of proof on any application is on the applicant and the standard of proof is on the balance of probabilities. I acknowledge the landlord's feeling of animosity towards the tenant: "[The tenant] displays a constant disrespectful, disruptive, negative,

combative demeanor towards the landlord both in person & his unsolicited rambling email tirades.” In the result, however, I find that the landlord has not met the required standard of proof with respect to establishing cause in support of the issuance of an order of possession. I therefore set aside the landlord’s notice to end tenancy for cause, with the result that the tenancy continues in full force and effect.

I now turn to the tenant’s application for authorization to change the locks on the unit. Having considered the tenant’s limited evidence, on a balance of probabilities, I find there is insufficient evidence to support his suggestion that the landlord and / or her agent(s) are guilty of “unlawful entry & theft of personal property.” In the result, the tenant has not met the required standard of proof with respect to this aspect of his application, and it is therefore dismissed. The tenant has the option of reporting suspected unlawful entry and theft to the police. For the reference of both parties, attention is drawn to the following related sections of the Act:

Section 25: **Rekeying locks for new tenants**

Section 28: **Protection of tenant’s right to quiet enjoyment**

Section 29: **Landlord’s right to enter rental unit restricted**

Section 31: **Prohibitions on changes to locks and other access**

Section 70: **Director’s orders: landlord’s right to enter rental unit**

Further, Residential Tenancy Policy Guideline # 7 speaks to **Locks and Access**.

The full text of the legislation, Fact Sheets, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca/

As the outcome of this hearing principally favours the tenant, I find he is entitled to recovery of the \$50.00 filing fee. I order that the tenant may withhold this amount from the next regular payment of monthly rent.

Conclusion

Pursuant to all of the above, I hereby set aside the landlord's notice to end tenancy for cause. The tenancy therefore continues in full force and effect.

I hereby order that the tenant may withhold \$50.00 from the next regular payment of monthly rent in consideration of the filing fee for this application.

The tenant's application for authorization to change the locks on the unit is hereby dismissed.

DATE: June 25, 2009

Dispute Resolution Officer