

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause.

Service of the hearing documents, by the Tenant to the Strata Corporation, was done in accordance with section 89 of the *Act*, delivered in person to the Strata Corporation Office. The Agent for the Strata Corporation confirmed receipt of the hearing package on June 8, 2009.

Both the Strata Corporation Agent and the Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The Tenant has applied to cancel a 1 Month Notice to End Tenancy that was issued by the Strata Corporation and not the Landlord.

The Strata Property Act states that a Strata Corporation can evict a tenant under sections 138 as follows:

138(1) A repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot that seriously interferes with another person's use and enjoyment of a strata lot, the common property or the common assets is an event that allows the strata corporation to give the tenant a notice terminating the tenancy agreement under section 47(1)(d) & (e) [landlord's notice: cause] of the *Residential Tenancy Act*.

138(2) An eviction under subsection (1) does not affect any rights of the landlord under the tenancy agreement.

As per the above, I find that the issuance of the 1 Month Notice to End Tenancy for Cause to the Tenants by a Strata Corporation and not the Landlord, to be in accordance with Section 47 of the *Residential Tenancy Act*.

Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel the 1 Month Notice to End Tenancy for Cause issued by the Strata Corporation on May 27, 2009, under section 47 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy began January 1, 2009. The Owner/Landlord of the rental unit was not present at the hearing however the Agent for the Strata Corporation read a letter he had received from the Owner/Landlord requesting the Strata Corporation to cancel the 1 Month Notice to End Tenancy that was issued on May 27, 2009.

The Agent for the Strata Corporation testified that they had received 3 noise complaints regarding the rental unit and 1 complaint for damage to a hallway carpet and that letters were issued to the Owner/Landlord in response to these complaints on March 4, 2009, March 24, 2009, April 22, 2009, and April 23, 2009.

On May 11, 2009 the Strata Corporation wrote to the Owner/Landlord requesting that she evict her tenants and when they did not hear back from the Owner/Landlord the Strata Corporation issued a 1 Month Notice to End Tenancy for Cause dated May 27, 2009 and the Agent for the Strata Corporation posted the 1 Month Notice to End Tenancy for Cause on the rental unit door on May 28, 2009.

The Tenant applied to cancel the notice on June 2, 2009.

The Tenants advised that they were out of the Country on vacation during the period the complaints were made and that the complaints were a result of their house sitter's actions. The Tenants advised that since they have returned from their holiday and since their Landlord told them what had happened, that they have changed the location of their garbage and so there have been no further complaints about noise or smell.

The Agent for the Strata Corporation confirmed that since April 23, 2009 there have been no further complaints received about this rental unit.

The Agent for the Strata Corporation advised that the Landlord was out of the Country from April 15, 2009 and that the letter she wrote in response to all of the Strata Corporations letters was dated June 2, 2009. The Agent for the Strata Corporation did not know the date that the Landlord returned to the Country.

The Agent for the Strata Corporation advised that the letters were only sent to the Owner/Landlord and that there was no communication directly to the Tenants or Occupants of the rental unit prior to the issuance of the 1 Month Notice to End Tenancy on May 28, 2009.

Analysis

The Strata Corporation has issued a 1 Month Notice to End Tenancy for Cause whereby they state that the Tenants and or Occupants have significantly interfered with or unreasonably disturbed another occupant as stipulated under section 47 of the Act. While I have no doubt that the complaints were received by the Strata Corporation and that the Strata Corporation wrote letters to the Owner/Landlord to inform them of the complaints, I find that in this circumstance the Strata Corporation failed to ensure the Tenants or Occupants were informed that their actions were causing a disturbance to others, which prevented them from changing their actions so as not to disturb others to the point that it would become a significant disturbance.

Based on the testimony and evidence before me I find that the Tenants / Occupants of the rental unit were not advised that they were causing a disturbance until they received

the 1 Month Notice to End Tenancy posted on their door and that the Owner/Landlord did not know of the problem until she returned from her vacation abroad.

There is evidence to support that once the Landlord and Tenants were informed of the situation, whereby the Tenant's/Occupant's actions were allegedly disturbing others, the alleged disturbing behaviour stopped and the Tenants have since resolved the issue with the dirty carpet. Based on the aforementioned I find that the Agent for the Strata Corporation has failed to substantiate the issuance of the 1 Month Notice to End Tenancy for Cause.

Filing fee - \$50.00 – The Tenant has applied to recover the cost of the filing fee for their application. While I find that the Tenant has been successful in their application, given the circumstances before me with the various parties involved, I dismiss the Tenant's request without leave to re-apply.

Conclusion

I Hereby Order that the 1 Month Notice to End Tenancy, issued on May 27, 2009, is cancelled, and is of no force or effect.

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: July 16, 2009.

Dispute Resolution Officer