

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard. At the hearing the landlord made an oral request for an order of possession in the event that the tenant's application was not successful.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on September 01, 1991. The rental unit is an apartment located in a residential complex. On April 30, 2009, the landlord served the tenant with a one-month notice to end tenancy for cause.

The notice to end tenancy alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety or lawful right of another occupant, has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, has jeopardized a lawful right or interest of another occupant and has assigned or sublet the rental unit without landlord's written consent.

The landlord has filed into evidence an account of events that lead up to serving the tenant with a notice to end tenancy for cause. On August 21, 2008, the tenant hosted a party that caused noise disturbances to the other tenants. The landlord did not issue a warning letter to the tenant.

On March 19, 2009, a staff member found three intoxicated males in the laundry room. The police were called and two males ran into the tenant's unit and the third was arrested. The landlord did not submit any further information regarding this incident and also did not issue a warning letter to the tenant.

In early April 2009, a male (JE) called the office of the landlord to complain that the

tenant had evicted him and would not return the rent he had paid for April. JE also advised the landlord that the tenant rents out her couch on a nightly basis. The landlord conducted an inspection on May 28, 2009. A member of the team that conducted the inspection testified at the hearing. She stated that there was no evidence of any person other than the tenant and her family, living in the apartment.

On April 29, 2009, a building manager reported a fire in the bush near the tenant's apartment. Upon further clarification, the landlord was informed that there was no fire. The ashes that the manager had seen were from a funeral ceremony.

The landlord agreed that other than the above mentioned incidents, there have been no complaints against the tenant from other residents, no noise disturbances, no domestic fights and no evidence of subletting by the tenant.

The tenant testified that she had not sublet her apartment to JE or to anyone else. She also stated that she had not received any rent from JE and has had no contact with him since mid June, when he approached her and had to be escorted away by police. He has been ordered by the police to have no contact with her.

The tenant testified that she has rented this unit for 19 years and has not received a warning letter. She also stated that there was no fire in the bushes as alleged by the landlord. The ashes from burning pieces of cedar at a funeral ceremony were placed near the bush. The tenant agreed to inform the landlord of any such future events.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety or lawful right of another occupant, has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, has jeopardized a lawful right or interest of another occupant and has assigned or sublet the rental unit without landlord's written consent.

Based on all the evidence before me, I find that the landlord has not proven her case.

The landlord's witness testified that during the inspection of the rental suite on May 28, 2009, no evidence was found to indicate that the tenant was subletting the rental unit.

I accept that the tenant and/or her guests behaved badly on the dates in question (August 21, 2008 and March 19, 2009), but I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. From the evidence filed by the landlord, it appears that these incidents were isolated and not an ongoing pattern of behaviour for this tenant.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated April 30, 2009. As a result, the tenancy shall continue in accordance with its original terms. The tenant would be wise to refrain from giving other occupants of the residential complex, reason to complain. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

Dated July 24, 2009.

Dispute Resolution Officer