

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 for cause. 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 approximately 20 years ago. The rent is \$365.00 due on the first of the month. The rental unit consists of a room located in a hotel that houses a total of 43 rooms, 38 of which are occupied by tenants. The tenants share common washrooms.

On June 30, 2009, the landlord served the tenant with a one-month notice to end tenancy. The notice alleges that the tenant has seriously jeopardized the health, safety and lawful right of another occupant and the landlord.

The landlord stated that despite several verbal requests, the tenant does not keep his rental unit clean and neat which results in unhealthy and unsafe conditions for the tenant and the other occupants of the hotel. In June 2008, the tenant was served a notice to end tenancy, for the same reason as the current notice dated June 30, 2009. The notice dated June 2008, was cancelled when the tenant and landlord came to an agreement regarding the issues at hand.

The landlord stated that since the summer of 2008, at the request of the owners, he started conducting monthly inspections of all the rooms. He stated that it is his practice to provide the tenants with a notice of inspection by slipping the notice under the door and also posting a notice on the bulletin board, located in the common area.

The landlord stated that he found it difficult to communicate with the tenant with regard to inspecting the tenant's room. Despite serving the tenant with a notice of inspection, each time the landlord intended to conduct an inspection, the tenant would not allow the landlord access to his room. The landlord stated that he is able to visually check the rental unit without entering the unit, when the tenant leaves the door open.

The landlord stated that since the tenant prevents him from conducting inspections in the tenant's room, he was unable to provide any photographs as evidence to show the condition that the tenant keeps his room in.

The landlord has offered the tenant assistance by way of cleaning materials and garbage bags but the tenant has not taken advantage of this offer.

The landlord has filed a letter from the occupant (NH) of the rental unit (#32) that is adjacent to that of the tenant (#33). This letter is dated August 15, 2008 and is addressed to the property manager. The letter reads as follows, with names omitted for confidentiality of the parties:

"It's room #32 I've asked my neighbour P #33 to clean his room because the bugs are coming over to my room. I know you have asked to clean it repeatedly! but nothing ever happen! I need a different room away from 33 or I have to move out at the end of the month Please and Thank you NH #32".

The landlord stated that on May 27, 2009 the City inspector visited the hotel and inspected all the rooms. The tenant was given a legal notice to have his room cleaned by June 03, 2009. The inspector was scheduled to return on June 29, 2009 but did not attend. The landlord stated that on that day, he attempted to inspect the tenant's room without success. A note was taped to the door denying the landlord entry to the room and some of the other tenants also advised him against inspecting the tenant's room.

The landlord stated that given the tense atmosphere on the day of his attempted inspection, he decided against conducting the inspection for fear of his personal safety. However, he stated that through the open door he was able to see that the room was still *"full of clutter, and debris and dirty"* as described by the City inspector.

In his written submission, the tenant stated that he has been a tenant of the hotel for approximately 20 years and had an excellent relationship with the previous manager. He stated that he has repeatedly asked to have his room sprayed for bugs and in reply to his requests, was told to move out. The tenant stated that deficiencies in the cleanliness of his room were due to a lack of appropriate supplies.

The tenant has submitted into evidence a video recording. The recording starts in the tenant's room and shows the tenant sitting by the window. The recording does not show the condition of the tenant's room but instead focuses on the condition of the other areas of the hotel including the common washrooms.

The tenant stated that he has cleaned up his room by removing the clutter. He admitted that the floor is not clean, but this is because the landlord has not provided a mop. The tenant's three witnesses described the tenant's room as "clean" and "half decent" and stated that the tenant has a garbage can, in his room, that he makes use of.

The tenant's counsel discussed the issue of the treatment of the tenant's room for bed bugs and cockroaches and pointed out that the landlord has failed to spray the tenant's room in the last two to three years. The landlord argued that the room was not sprayed because the tenant would not allow access to his room and in addition the tenant had to rid his room of the clutter, prior to treating the room.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant seriously jeopardized the health and safety of another occupant and/or the landlord and did not correct the situation within a reasonable time after written notice to do so.

Section 32 of the *Residential Tenancy Act*, states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

I find as a fact that the tenant was given several verbal warnings and at least one written warning by a third party (City) to clean up his room. The tenant was served a notice to end tenancy approximately one year ago for the same reason. A short time after the service of the notice, the landlord received a written complaint from the occupant of the adjoining room about the lack of cleanliness of the tenant's room.

The issue at hand is the condition of the tenant's room and the tenant's evidence by way of video recording does not address this issue. The tenant had an opportunity to demonstrate the state of his room, but chose to focus his attention on the common areas of the hotel. The tenant's witnesses described the tenant's room as clean, but the tenant himself described the floor of his room, as dirty.

Based on the verbal and documentary evidence submitted by both parties, I find that the tenant has failed to keep his room in an acceptable condition, despite several verbal and written warnings, a notice to end tenancy, a written complaint from the tenant of the next room and a legal notice from a third party, over a period of at least one year.

Maintaining his room in this unclean condition jeopardizes the health and safety of the tenant himself and the other occupants of the building. The tenant has also denied the landlord his lawful right to inspect the rental unit after providing the tenant with notice to do so. Therefore, I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant.

Dated July 22, 2009.

Dispute Resolution Officer