

DECISION

Dispute Codes:

CNC

Introduction

This is the Tenant's application to cancel a One Month Notice to End Tenancy for Cause.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Should the Notice to End Tenancy issued July 17, 2009, be cancelled?

Background and Evidence

The One Month Notice to End Tenancy for Cause gives the following reasons for ending the tenancy:

The tenant, or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- put the landlord's property at significant risk.

This tenancy began in April, 2002. The Landlord's agent testified that they took over management of the rental unit on July 1, 2009 from the previous company. Several warning letters were issued to the owners of the rental property, with copies to the Tenant, with respect to bylaw infractions. These letters were dated May 8; November 12; and December 10, 2008, and July 3, 2009. Initially, the Tenant denied receiving copies of any of the letters, but later in the Hearing he admitted to receiving one of the letters, dated December 10, 2008.

The Landlord's agent testified that there were issues regarding gaining access to the rental unit in order to perform routine safety inspections. The Tenant testified that he had a fulltime job and could not afford to take a day off work in order to provide access to the Landlord.

The Landlord's agent testified that, on gaining access to the Tenant's residence, some fire safety issues were identified:

- the smoke detector was disengaged from the wall; and
- there were mattresses piled up against the walls in the rental unit.

The Tenant denied having mattresses piled up against the walls. The Tenant testified that the smoke detector was hanging from the wall, but that he did not disengage it. The Tenant stated that he did not advise the building manager when he noticed the dangling smoke detector.

The Landlord's agent testified that the Tenant contravened a number of bylaws, by:

- keeping a pet in the rental unit;
- operating an air conditioner; and
- hanging items off his balcony.

The Tenant testified that the previous Landlord allowed a pet and no one told him anything about the bylaws. He has since gotten rid of his cat and the air conditioner.

The Tenant testified that he did not have a copy of the bylaws and did not know air conditioners were not allowed. Furthermore, he stated that the black sheeting hanging off his balcony was there to hide his expensive bikes because he was not provided with a storage locker in the rental property.

The Landlord's agent testified that the Tenant was given a copy of the bylaws, and that the Tenant had signed a form acknowledging receipt of the bylaws and agreeing to adhere to them.

The Landlord's agent stated that an incident occurred on July 1, 2009, over a period of a couple hours at lunch time. The Tenant and two other persons appeared at the rental unit in a drunken state. One of the persons fell and vomited on the steps of the building, before being taken into the rental unit by the Tenant. A neighbour called the police, who

attempted to gain access to the suite. The door was locked, so the police had to break down the door. An ambulance also attended, but the person who was physically ill refused medical attention. The police and ambulance attendants left the rental property. On July 3, 2009, the Landlord issued written notice to the Tenant that he would be receiving a Notice to End Tenancy for contravening the bylaws.

The Tenant testified that his cousin and he were drinking and drank too much on July 1, 2009. They went to his residence to sleep it off, and were sleeping when the police arrived. They didn't hear the police knocking on the door. The Tenant replaced the door himself.

Analysis

I accept the Landlord's agent's testimony with respect to whether or not the Tenant had a copy of the bylaws. However, having a cat; installing an air conditioner; and hanging black sheeting from a balcony does not meet the causes stated by the Landlord on the Notice to End Tenancy for ending the tenancy.

The incident on July 1, 2009, occurred over the lunch hour. This was not a late-night disturbance where other occupants were awakened by noise. The Tenant has lived in the rental unit for more than 7 years, with no evidence of any other reported incident such as this. I accept the Tenant's undisputed testimony that he replaced the door at his own expense. I do not find that this lone incident constitutes significant interference with or unreasonable disturbance of another occupant or the Landlord.

The Tenant stated that he knew the smoke alarm was hanging from the wall and that he did not alert the building manager. The Landlord's agent alleged that the Tenant, in not alerting the building manager, put the Landlord's property at significant risk. However, there was no evidence that the smoke alarm was inoperable, only that it was disengaged from the wall. Therefore, I do not find that the Tenant put the Landlord's property at significant risk.

I allow the Tenant's application. The One Month Notice to End Tenancy for Cause is cancelled. The Tenancy remains in full force and effect.

The Tenant stated that he did not provide access to the Landlord because he had to work and could not afford to take a day off. I caution the Tenant that a landlord has the right to enter a tenant's rental unit on 24 hours written notice, for a reasonable purpose, between the hours of 8:00 a.m. and 9:00 p.m. Where a valid notice has been given by a landlord, it is not required that the tenant be present at the time of entry.

Conclusion

The One Month Notice to End Tenancy for Cause is cancelled. The Tenancy remains in full force and 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: September 11, 2009.
