



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 was an application by the tenant seeking an order cancelling a one month Notice to End Tenancy for cause. The hearing was held at the Residential Tenancy Office in Burnaby on October 22, 2008. The applicant and the respondent were given additional time to provide evidence and to respond to late submissions of evidence. The tenant attended and was represented by the named advocate. The landlord was represented on the application by its building manager and by a consultant who also was a witness for the landlord.

Background and evidence

The tenancy began in December 2006 and runs from month to month. The landlord gave the tenant a notice of rent increase that purported to be effective July 1, 2008. The new rent was 632.50 per month. On September 10, 2008 the landlord issued a Notice to End Tenancy for cause seeking to end the tenancy effective October 31, 2008. There are two versions of the Notice; the copy produced by the landlord from her files alleges four grounds, namely:

Tenant is repeatedly late paying rent

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

jeopardize a lawful right or interest of another occupant or the landlord

The tenant's copy differed from the landlord's in that it claimed that he had seriously jeopardized the health or lawful right of another occupant or the landlord, but did not

allege that he had engaged in illegal activity that has jeopardized a lawful right or interest of another occupant or the landlord.

Although the matter is directly not before me, I note as well that there are two versions of the landlord's Notice of rent increase. The version produced by the landlord was dated 25 April – 2008 and declared a rent increase of \$22.50 payable starting on 01 July, 2008. If the Notice was given April 25, 2008 it should not have been effective until August 1, 2008. The Notice of Rent Increase submitted by the tenant was dated March 12, 2008; it declared a rent increase of \$25.00 (an amount that exceeded the allowable increase) to be payable July 1, 2008. No explanation for this discrepancy was offered at the hearing.

In her written submissions, the landlord's building manager complained that the tenant has been warned numerous times about paying his rent on time. She said that the tenant refused to pay a rent increase beginning in July, 2008 and did not become current until September, 2008. She asserted that the tenant has: "consistently tried to under mind (sic) my authority as building manager." According to the building manager the tenant has addressed her using profanities and obscene language.

It is alleged that on September 5, 2008 the tenant was seen leaving a just vacated vandalized suite in the rental property. The inference was that the tenant had participated in the vandalism. The landlord provided submitted that the tenant had been charged with theft under \$5,000.00 from another tenant.

The landlord submitted two letters, one dated March 3, 2008 and the other dated August 21, 2008. The March 3rd letter demanded payment of rent for March. The August letter noted the tenant paid \$610.00 for August instead of \$632.50. The landlord produced a 10 day Notice for unpaid rent dated March 4, 2008, several bank deposit slips and several rent roll print outs.

The tenant's evidence by way of testimony and written submissions is that although he did fail to pay the landlord's rent increase on several occasions, this was due to the fact that he had provided the landlord with post-dated cheques for the former rental amount;

these were negotiated by the landlord, who then complained that he did not pay the full amount of the rent. The tenant noted that the landlord's one written request for the additional rental amount requested that the remainder be paid with the following month's rent.

Concerning the incident of September 4th or 5th, 2008 the tenant stated that he returned to the apartment building late on the evening of September 4, 2008; he saw another tenant moving out of the building. The other tenant, referred to as "J" had been evicted. The tenant visited with J and some others in the newly vacated rental unit. J did cause some damage to the rental unit when the tenant was present, but the tenant did not aid or abet J and in fact attempted to discourage him. The tenant left the unit but later returned briefly to retrieve a bottle he had left behind.

With respect to the allegation of theft, the tenant pointed out that he had not been charged with theft, but rather with possession of stolen property, namely: a motorbike license plate found on his motorbike which was switched for that of another tenant, leaving the other tenant without a plate. The tenant expressed his innocence; he has, or will enter a plea of "not guilty" to the charge.

The landlord produced a copy of the decision with respect to the tenant J's application to cancel a Notice to End his tenancy; some of the grounds for seeking to end J's tenancy were that he attempted to undermine the resident manager's authority, called her names and was very demanding.

The tenant produced a statement from former tenants of the rental property who commented that they had unpleasant dealings with the resident manager; she was described as "very argumentative and defensive" when problems were brought to her attention. The tenants described her as quick to anger and they felt bullied and harassed by her. According to the statement they moved out in July, 2008 due to the attitude of the resident manager. The tenant produced a statement from another former tenant, Ms. H who stated that the resident manager had accused her of causing trouble and spreading lies about her. She said the resident manager had yelled at her and called her "horrible names".

According to the resident manager all of these individuals were engaged in a conspiracy to undermine her authority.

Subsequent to the hearing the landlord submitted a CD containing photographs of Mr. J's former rental unit picturing damage therein.

Analysis and conclusion

During the hearing of this application I noted that the landlord's representative, the building manager was excitable and quick to interject when she heard evidence that she disagreed with; she showed signs of anger upon hearing evidence from the tenant. The tenant on the other hand was soft spoken, rational in his responses and gave no outward display of annoyance at the accusations made against him. I note that even in her correspondence to the tenant the building manager was accusatory in her tone. Portions of her March 3, 2008 letter to the tenant are typed all in capital letters, presumably for emphasis; she accused the tenant of: "PLAYING ALL KINDS OF GAMES AND BLAMING ME THE MANAGER FOR NOT RECEIVING YOUR RENT."

I found the tenant to be more credible in his evidence than the building manager. I accept his testimony that he did not use the profane language ascribed to him by the building manager. Clearly there is a personality conflict between the tenant and the building manager, but that does not constitute cause for ending a tenancy. The evidence shows that the building manager has had conflicts with several tenants and former tenants, some of those conflicts were no doubt related to the conduct of other tenants, but the submissions of the tenant show that the building manager has repeatedly accused tenants other than the applicant of undermining her authority.

I find there to be insufficient evidence that the tenant has been repeatedly late paying rent to uphold the Notice to End Tenancy on this ground. The tenant admittedly failed to pay the increased rent for some period, but it is not clear on the evidence on how many occasions that occurred. The matter is clouded by the landlord's confusing Notices of Rent Increase. In fact the rent increase may not have been effective until

August, 2008. The landlord's deposit slips and rent roll are not evidence of when rent was paid, but rather evidence as to when it was deposited. I do not find that the landlord's evidence has shown the tenant to have been repeatedly late paying rent.

With respect to the remaining grounds for ending the tenancy, I find that the landlord has not shown that the tenant has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. Apart from the conflict with the building manager upon which I have already commented, I have insufficient direct evidence to substantiate this ground. The evidence does not show that the tenant caused damage to J's rental unit and the evidence does not establish that the tenant engaged in any illegal activity. The only evidence as to illegal activity is that a charge has been laid relating to possession of stolen property; the charge is denied by the tenant and apart from the fact of the charge the landlord has presented no evidence to show the tenant to have committed the offence, incorrectly referred to as theft.

For the reasons stated I find that the Notice to End Tenancy for cause dated September 10, 2008 should be set aside and I so order. The tenant is entitled to recover the \$50.00 filing fee paid for this application. The said sum may be deducted from a future installment of rent.

Dated October 31, 2008.