



Dispute Resolution Services

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

Decision

Dispute Codes: CNC FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. Both of the tenants, the landlord and an agent for the landlord participated in the teleconference hearing.

At the outset of this hearing, I informed all of the participants that I was the Dispute Resolution Officer who had conducted a hearing one year ago involving the same parties. In that hearing, the tenants had successfully disputed a notice to end tenancy for landlord's use.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began in 2003. The tenants rent a cottage on the landlord's property. On September 1, 2009, the landlord served the tenants a one month notice to end tenancy for cause. The causes alleged in the notice were as follows: (1) the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of the landlord; (2) the tenant has engaged in illegal activity that has, or is likely to (a) adversely affect the quiet enjoyment, security, safety or physical well-being of the landlord and (b) jeopardize a lawful right or interest of the landlord.

The evidence of the landlord regarding the alleged causes to end the tenancy was as follows. The female tenant filed a sexual assault charge against the landlord, but the case was dismissed in court. The landlord has a peace bond issued against him, which will end on February 8, 2010. Because of the peace bond the landlord is unable to effectively manage the property and carry out his landlord duties. I questioned the landlord regarding two letters from the landlord's lawyer which indicate that the sexual assault charge was not dismissed, but rather that Crown Counsel was willing to enter a stay of proceedings in exchange for the landlord's consent to a peace bond. The landlord acknowledged that he did choose to accept a peace bond rather than defend himself against the criminal charge.

The landlord also alleged that the female tenant was a squatter. I pointed out that the landlord he had identified the female tenant as a tenant on both the notice to end tenancy for cause issued September 1, 2009 and on the notice to end tenancy for landlord's use that was subject of the dispute resolution hearing one year ago, and the landlord had not raised the issue of the female tenant as a squatter in that previous hearing. I also stated that if in fact the female tenant was a squatter that I would have no jurisdiction to make any orders against her, as the issue of squatters was a police matter, not a residential tenancy matter. I asked the landlord if his position was that the female tenant was a tenant or a squatter, and he stated that she was a tenant. I therefore did not need to consider whether the male tenant was engaged in illegal activity by allowing a squatter to reside on the property.

The landlord also stated that because he was unable to properly manage his property, he cannot monitor whether the tenants are "growing all the pot they want" or engaging in other illegal activity. The landlord conceded that he did not have any evidence of actual illegal activity, and this was only speculation on his part.

Analysis

I find that the alleged causes for ending the tenancy are entirely without merit. The landlord made the choice to accept the peace bond rather than defend the sexual

assault charge, and it was this choice that resulted in the landlord's impeded ability to personally manage the rental property. There was no evidence whatsoever that the tenant filed a false claim of sexual assault, or that the tenant acted at all improperly in this matter. The landlord did not provide any other evidence that the tenants breached the *Residential Tenancy Act* as alleged. I therefore find that the notice to end tenancy is not valid.

Conclusion

I cancel the notice to end tenancy, with the effect that the tenancy continues.

As the tenants' application was successful, they are entitled to recovery of the \$50 filing fee, which they may deduct from next month's rent.

Dated October 16, 2009.