



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, OPT, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Order for the landlord to comply with the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement, an Order of Possession for the tenant and other issues.

The tenant served the landlord by with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has there been a breach of the *Act*, Regulation or tenancy agreement by the landlord?
- Is the tenant entitled to an Order of Possession?

Background and Evidence

This tenancy started on August 01, 2002. The tenant pays a monthly rent of \$356.00 which is due on the 1st of each month. The tenant paid a security deposit of \$250.00 on July 27, 2002. There is some dispute between the landlord and tenant as to whether this is a month to month tenancy or a fixed term tenancy. The tenant claims this is a fixed term until August 01, 2010 and the landlord claims it is a month to month tenancy. The landlord states that the tenant signs an annual rent subsidy form each year but this does not determine a fixed term tenancy.

The tenant testifies that after an altercation between a friend of his who was visiting the building and another tenant, when his friend entered the building without authorisation and threatened the other tenant with his fist when she challenged him, he was asked to attend a meeting with the management team who showed him a video of the incident. The tenant testifies that he was shocked at the video and was presented with a choice to either be evicted with a 10 Day Notice due to a breach of the tenancy agreement or to sign a mutual agreement to end the tenancy on December 31, 2009. The tenant claims he felt he had no choice but to sign the mutual agreement to end the tenancy as this gave him more time to find alternative accommodation.

The tenant claims he put in many applications for alternative accommodation but wanted to stay where he was as he felt he had been pressurised into signing the agreement. The tenant feels that it was not his fault or his responsibility that his friend entered the building because he had not buzzed him in with his internal system. He feels the other tenant should be held responsible as she decided to approach his friend and caused the altercation.

The tenant testifies that on another occasion he had another friend staying with him for 11 days when the tenant offered to support him in his rehabilitation program. This friend was on medication at the time which caused him to have violent and aggressive mood swings. The tenant testifies that although this friend did threaten him during one of these mood swings no assault took place however, there was screaming and yelling which could have affected other tenants. The tenant testifies that he asked his friend to leave and go to the hospital as he could no longer stay in his rental unit with him. The tenant disputes the landlords' written report which states he was bringing visitors into the building with a predatory intent. The tenant disputes this allegation and states that these have been isolated incidents. He has been a long term tenant of over seven years with no prior concerns.

The tenant has produced character references and a letter stating he is attending the Vancouver Addiction Services for counselling and is attempting to get into a treatment centre. Other tenants have also signed a 'good neighbour' list for the tenant.

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The landlord testifies that they had concerns over the two incidents with visitors of the tenants being violent or threatening violence on the premises. The landlord testifies that a meeting did take place and it was mutually agreed that the safety of the other tenants residing in the building was repeatedly compromised by this tenants visitors. The landlord claims that although this was only two isolated incidents the tenant had a pattern of unauthorised visitors entering the building and the risk this potentially created for the other tenants. The landlord testifies that he reviewed the terms of the tenancy agreement with the tenant along with the crime free addendum which does specify that the landlord may evict a tenant for these types of tenancy breaches. The landlord confirms that he offered the tenant the option of ending the tenancy by mutual agreement which the tenant accepted. The landlord testifies that the tenant was not coerced in any way to sign this agreement and the 10 Day Notice was only mentioned in reference to the tenants unauthorised visitors staying at his rental unit. At this meeting it was also agreed that the tenant would not have visitors to his rental unit and the landlord also offered assistance in finding alternative accommodation and assistance in accessing an addiction recovery program.

The landlord testifies that a few days later, after carrying out a security check, he noticed that the tenant had breached his agreement not to have visitors. After confronting the tenant it was decided that no action would be taken at that time and the landlord would wait until the mutually agreed end of tenancy occurred. The landlord testifies that he offered the tenant help by providing a contact list of affordable housing. However, in December he received notice of this hearing and the tenants' intent to disregard his signed agreement to vacate the rental unit on December 31, 2009.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenant did agree to end the tenancy rather than face an eviction for a breach of his tenancy agreement with the landlord. There is no evidence other than the tenants' testimony that the tenant was coerced into signing this agreement to end the tenancy on December 31, 2009. The tenant argues that these are isolated incidents and therefore do not pose a threat to

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other tenants. However a tenant was threatened by one of the tenants guests who had gained enter to the building without authorization from the tenant. A landlord has an obligation to all his tenants to ensure they can live in an environment free from fear or threat of violence.

While I commend the tenant for his attempts to help his friends in times of need he has to respect that he is living in a multi dwelling building and the actions of his visitors in these two incidents affected the peace and quiet enjoyment of at least one other tenant. Section 47 of the act states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

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In this instance the tenant did allow a friend, on at least one occasion, to live with him in his rental unit for 11 days which was rented for sole occupancy. The tenant is also responsible for the behavior of his visitors and guests and their actions have disturbed and affected the quiet enjoyment, security and safety of at least one other occupant. While the landlord could have issued the tenant with a One Month Notice to End Tenancy for cause for these infractions(not the 10 Day Notice mentioned) I find the landlord gave the tenant the opportunity to mutually agree to end the tenancy instead. Consequently, I find the tenant did agree to this and therefore I dismiss his application for an Order of Possession based on the grounds that he was coerced into signing this agreement.

I also find there is no evidence that the landlord did not comply with the Act other then mentioning a 10 Day Notice to End Tenancy rather than a One Month Notice. Therefore this section of the tenants claim is also dismissed.

The tenant did not raise any other relevant issues to be decided other than the issues relating to the above disputes.

The landlord has requested an Order of Possession to take effect on March 31, 2010. However, I have carefully considered the tenants' arguments that he is hoping to attend a treatment centre for one Month in March or April, 2010. Due to the tenants long term tenancy and the good character references obtained from his volunteer work place and his willingness to participate in a rehabilitation centre for a month I have extended the date for the Order of Possession to take place until April, 30, 2010. The tenant will remain bound by the landlords' terms of no visitors for the period to the end of his tenancy and will remain responsible for his rent while attending the rehabilitation centre.

Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply.



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I HEREBY ISSUE an Order of Possession in favour of the landlord effective on April 30, 2010. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: January 27, 2010.

Dispute Resolution Officer