



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing was convened to deal with an application by the tenant for an order cancelling a Notice to End Tenancy for Cause.

The landlord and tenant both gave evidence, and were both assisted in the hearing.

Issues(s) to be Decided

Should the Notice to End Tenancy for Cause be cancelled?

Background and Evidence

This tenancy began on November 1, 1999. The tenant paid a security deposit of \$465.00 on November 30, 1999, and the rent amount fluctuates depending on the income and circumstances of the tenant, but is a minimum of \$32.00 per month. The rent amount today is \$32.00 per month, due on the 1st day of each month.

The landlord served a 1 Month Notice to End Tenancy for Cause on January 26, 2010, which states that the tenant must vacate the unit by February 28, 2010. The notice was served upon the tenant on January 27, 2010. The reasons listed on the form for ending the tenancy are:

- Tenant is repeatedly late paying rent
- Tenant has allowed an unreasonable number of occupants in the unit/site

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Firstly, dealing with the repeated late rent payments, I've heard undisputed evidence from the landlord that the tenant was late paying rent 6 times in the last 9 months, and that 25 late notices were issued since the start of the tenancy. Copies of the following documentation were provided by the landlord as evidence:

- May 11, 2009 – 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued to the tenant for \$828.00 due on May 1, 2009
- May 20, 2009 – 1 Month Notice to End Tenancy for Cause for repeated late rent payments, requesting the tenant to vacate by June 30, 2009
- October 13, 2009 – 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued to the tenant for \$1,229.44 due on October 1, 2009
- November 25, 2009 – 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued to the tenant for \$42.00 due on November 1, 2009
- January 11, 2010 – 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued to the tenant for \$52.00 due on January 1, 2010

The landlord also testified that rent in the amount of \$32.00 for February, 2010 is not yet paid.

The number of occupants in a unit is also at issue in this dispute. The Tenancy Agreement, at Item 9 states as follows:

- When a person not listed in Section 2 above resides in the Premises for a period in excess of two (2) weeks in any calendar year, that person shall be deemed to

be occupying the Premises contrary to this Agreement and shall be considered a TRESPASSER. Where the tenant anticipates an additional occupant(s) in the Premises, for a period exceeding two (2) weeks, the Tenancy shall promptly apply in writing for permission. Failure to apply and obtain the necessary approval of the Landlord is considered a breach of this agreement and is grounds for termination.

The tenant has testified that she was going through a particularly rough time after the loss of her mother, and that her father and sister stayed with her as family support from time to time. She stated that they seemed to be there a lot, but they were not staying there for intervals of 2 weeks or more; they each have their own residences.

The landlord testified that the father had been living there for some time, and that his own residence was burned on June 10, 2008 and has not been inhabitable since then. Further, the landlord testified that the tenant's sister submitted an application to rent a unit in this complex and gave this unit as her current residential address.

The remaining reasons on the form for ending the tenancy deal with the cleanliness of the unit. The landlord is concerned that the state of the unit makes it a fire hazard, and that repairs that were the responsibility of the tenant have not been completed within a reasonable time. The landlord submitted several photographs as evidence depicting a residential unit that has stacks of unfolded clothing in a bedroom, in closets and a laundry room, as well as cardboard boxes and other unidentified items in front of a hot water tank. The photographs also show disorder on the outside of the unit, a screen from a window leaning up against the outside wall, spilled ashtrays within the unit, bi-fold closet doors missing or leaning against the wall, cupboard doors missing in the kitchen and general untidiness of the unit. The landlord also testified that clothing was stacked in front of or on top of a base-board heater. The landlord also submitted documents to show that the unit required fumigating for bedbugs in 2007.

The tenant provided photographs and evidence to support the claim that the unit was not in such a state of disarray, and testified that the photographs taken by the landlord were not actually photographs of her unit. The photographs provided by the tenant show a unit that is clean, but requires some attention due to general wear and tear. She also testified that the landlord entered her unit without any notice and without her knowledge.

Analysis

I accept the evidence of the tenant that the last several months have been very trying for her in dealing with the loss of her mother. I also accept the fact that on-going support from her father and her sisters was helpful to her, but whether or not they stayed in the unit beyond what is acceptable in the Tenancy Agreement is unclear.

I do not accept the evidence of the tenant that the landlord entered the unit without notice and without her knowledge. On October 13, 2009, the landlord included a letter with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which stated that a home inspection would be completed on October 21, 2009 which would proceed even if she was not present. Further, I cannot accept the evidence of the tenant that the photographs taken by the landlord on October 21, 2009 were not in her unit and the evidence of the landlord dealing with those photographs is fabricated.

The evidence of repeated late rent payments has not been disputed by the tenant, but has been explained as being a rough time in her life. However, given that the rent was \$32.00 for the months of November and December, 2009 and January and February, 2010, I find that the explanation is not a defence to the notice to end tenancy.

Conclusion

Given the above, I find that the Tenant's Application to request that the Notice be cancelled is not supported under the *Act* by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), 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.

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: February 22, 2010.

Dispute Resolution Officer