

DECISION

Dispute Codes:

CNC

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on January 28, 2010 be cancelled?

Background and Evidence

The parties agree that on January 28, 2009 the tenant was served with a copy of a 1 Month Notice to End Tenancy for Cause, indicating that the tenant has significantly interfered with or unreasonably disturbed another occupant and that the 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.

This tenancy commenced 5 years ago, for rental of a unit within a 4 unit complex. The complex is operated by a non-profit society and is for rental to individuals who face mental health challenges.

The landlord stated that tenants are encouraged to utilize the services of the police when they encounter difficulties with neighbours. The evidence submitted by the landlord demonstrates some on-going problems with the tenant's brother, who has been arrested on the rental property and caused problems with a neighbouring occupant. .

On July 27, 2009 the landlord wrote the tenant a warning letter in relation to incidents reported on July 23 and 24, 2009, about loud and threatening behaviour between the tenant and a guest. On July 24 the police arrested the tenant's brother and provided a report to the landlord. The letter warns the tenant that he is responsible for the behaviour of his guests and that he may not engage in loud and abusive conduct. The letter also warned the tenant that further problems could result in the end of his tenancy.

The landlord provided an emailed list of police file records and short comments sent to the landlord by a RCMP member on January 19, 2010. This list of files contained dates and a very brief description of the investigation for each file. A number of the calls are in relation to the tenant's neighbour, the tenant's brother having conflict with the neighbour and the tenant's brother causing a disturbance when the tenant was absent from the home.

Since July 27, 2009 there have been 8 files opened by the police that are reportedly related to the tenant. During this time there were also 4 unfounded calls made to the police. Of the calls that were not unfounded 5 incidents involved the tenant's brother as follows:

- August 14 - Brother yelling and screaming at the neighbour's door;
- August 18 – Brother in altercation with then neighbour;
- August 25 – Brother at unit, altercation with neighbour, the tenant was not home;
- October 9 – Brother at unit yelling and threatening a tenant, unclear who is being threatened, brother was arrested; and
- November 12 – brother banging on tenant's door, tenant was not home.

The tenant was not home during 2 of these incidents and he described the other incidents as occurring due to a dispute over money between his brother and the neighbour. The tenant stated his brother does not have a key to his rental unit and has caused a disturbance trying to enter the unit when the tenant is not home.

The police files referencing the tenant included:

- September 12 – report of a disturbance that tenant reported as a fight started by a friend of the neighbour;
- December 4 – noise complaint by neighbour, tenant spoken to by police; and
- January 13 and 14, 2010 – noise disturbance calls to the rental unit, bylaw ticket issued on January 14.

The landlord has had a number of conversations with the tenant in relation to the disturbances and has warned him that he can not disturb other occupants of the building. No other incidents have been reported between January 14 and the time the Notice was issued on January 28, 2010.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or engaged in any illegal activity.

The landlord could not provide any details beyond the very brief descriptions included in the email provided to them by the police. There is no evidence of any contact made by the landlord with the tenant between July 2009 and January 2010 and no information provided showing that the landlord has investigated the conflict that appears to be occurring between the tenant's brother, the neighbouring occupant and the tenant. A

number of the calls to the police by the neighbour have been unfounded or involved the tenant's brother when the tenant was not at home.

Of concern is the presence of another individual on the property, over which the tenant may have little control. If the tenant's brother is attending at the property and causing disturbances in the absence of the tenant, this cannot be considered the fault of the tenant. There is evidence that a number of reports made to the police by the neighbouring occupant were determined to be unfounded. I note that the police records also indicate noise complaints filed against the tenant's neighbour.

The evidence before me does not, on the balance of probabilities, convince me that the tenancy should end for the reasons cited on the Notice. There is no evidence the tenant has engaged in any illegal activity, outside of noise complaints; one in December and on 2 consecutive days in January, more than 4 months after the warning letter was issued.

It appears that conflict between the tenant and the neighbouring occupant are resulting in calls to the police for reasons that are unfounded, that problems are caused by the tenant's brother and that, on occasion noise complaints against the tenant and his neighbour are founded. There is no evidence before me that the tenant's brother has caused disturbances while inside the home or on the property as an invited guest of the tenant.

The evidence before me causes me to consider the relationship between the tenant and his neighbour as one that is resulting in conflict and there is no evidence before me, outside of a warning letter issued in July 2009, of further attempts to enforce expectations of quiet enjoyment between the parties. However; the tenant should use this decision as a warning that further disturbances caused by him or any guest he invites onto the property could result in the landlord issuing him another eviction notice.

Conclusion

As I have determined that the landlord's have submitted insufficient evidence to establish that they have grounds to end this tenancy, pursuant to section 47(2)(d)(i) of the Act, I hereby set aside the One Month Notice to End Tenancy, dated January 28, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

Included with this decision is a copy of the British Columbia Guide for Landlords and Tenants for use by each party.

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: March 19, 2010.

Dispute Resolution Officer