

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call on this date to deal with the tenant's application for an order to cancel a 1 Month Notice to End Tenancy for Cause.

Two agents for the landlord appeared, all parties gave affirmed evidence, and each was given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A 1 Month Notice to End Tenancy for Cause was issued to the tenant on February 9, 2010, with an expected move-out date of March 31, 2010. The document states that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; 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.

The tenancy began on March 11, 2009. The tenancy is month-to-month and the tenant pays rent on the 1st of each month in the amount of \$270.00. A security deposit in the amount of \$135.00 was paid at the outset of the tenancy. There are no arrears outstanding for rent.

The landlord is seeking to end this tenancy due to two main events. The first event involved an altercation between the tenant and the tenant's girlfriend during the evening

of November 21, 2009 or the early morning hours of November 22, 2009. The tenant's girlfriend, who is paraplegic, had been visiting the tenant. She became intoxicated, had fallen out of her wheelchair on the outside of the residence and started to crawl across the lawn. The tenant testified that he assisted her and took her back into his home. The following day he took her to her home and she called an ambulance after discovering that her leg was broken. The tenant was charged with an offence, and a restraining order was made by the Court.

In early February, 2010 another altercation took place with the same girlfriend. On this date the tenant's girlfriend became intoxicated and attempted to stab the tenant in the face with a butcher knife. The tenant testified that he put his hand in front of his face and she managed to cut his hand. The tenant called the police, who then called an ambulance. The tenant was taken hospital and then arrested and placed into custody. He testified that he spent 2 days in city cells, then 6 days at a Provincial Correctional facility. He returned to his apartment on the Thursday, and on the following Monday, the landlord told him he would be evicted. The next day, the landlord served the tenant with the 1 Month Notice to End Tenancy for Cause.

The tenant testified that he has been charged, but not convicted, of breaching the terms of the restraining order, which is why he spent time in custody. He also stated that he is no longer seeing the girlfriend, and that there was no noise during these altercations, which he said was confirmed by the neighbour next door, although no one else gave evidence at the hearing.

The landlord testified that a petition was signed by other residents of the complex. The tenant did not see the petition, and asked the landlord for disclosure but was not provided any written material. He was told, however, that there were 15 names on the petition, and that 8 residents had complained. As a result of these events the landlord submits that they are fearful of their safety and are afraid of this tenant. Most of the tenants are elderly. The petition was not provided as evidence.

The landlord also testified that there were verbal complaints to him by other tenants on November 4, 2009 due to this tenant fighting with his girlfriend and slamming doors.

When questioned about any conversation with the tenant about it, the landlord testified that he did knock on the tenant's door 2 or 3 times, but no one answered. The tenant disputes this claim and testified that the police were only at the residence on one occasion. He also testified that he was never given any notice of any complaints by the landlord or any other tenants until he received the 1 Month Notice to End Tenancy for Cause.

Analysis

In making an application for an order to end to this tenancy the landlord has the burden of proving that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord or other tenants, in order to issue a 1 Month Notice to End Tenancy for Cause under section 47 of the *Act*.

It is not for me to determine whether the actions of the tenant contravene the *Criminal Code* but to assess whether this seriously jeopardized the health and safety of the other tenants.

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. I find that the other tenants in the complex do have cause to be concerned, and have had their right to quiet enjoyment adversely affected.

Conclusion

I find that the landlord has provided sufficient evidence to uphold the Notice to End Tenancy for Cause, and the tenant's application to cancel the notice is hereby 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 order that an

Order of Possession be issued effective March 31, 2010. 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: March 04, 2010

Dispute Resolution Officer