

DECISION

Dispute Codes CNC

Introduction

This was an application by tenant for an order cancelling a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant and the landlord's representative called into the conference and participated in the hearing.

Issues(s) to be Decided

Should the Notice to End Tenancy dated January 29, 2010 be cancelled?

Background and Evidence

The rental unit is an apartment in a strata title condominium complex. The tenancy began December 1, 2009 for a fixed term ending November 30, 2010.

On January 8, 2010 the strata corporation's property manager wrote to the tenant. He referred to a written complaint that alleged that the tenant had disturbed other residents. The property manager quoted from the complaint, but he did not provide a copy of the complaint or disclose the source of the complaint. On January 25, 2010 the property manager again wrote to the tenant; he referred to a written complaint of a disturbance on January 19, 2010. Again he did not provide a copy of the complaint or disclose the source of the complaint.

The landlord served the tenant with a one month Notice to End Tenancy dated January 29, 2010. The Notice alleged that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Apart from the two letters sent to the tenant by the property manager, the landlord did not provide evidence any documentary evidence or oral testimony to substantiate the

allegation that the tenant had unreasonably disturbed another occupant. The landlord's representative at the hearing had no personal knowledge of any disturbance by the tenant; his only knowledge came from the two letters sent to the tenant.

The tenant testified that several of the allegations against her had been disproved at a meeting of the strata council.

Analysis and Conclusion

It is incumbent upon a landlord who issues a Notice to End Tenancy for cause to provide sufficient evidence to prove, on a balance of probabilities the allegations of cause alleged by the Notice to End Tenancy. The tenant is also entitled to be informed of the evidence against her so that she may have an opportunity to rebut that evidence.

The Notice to End Tenancy was not given by the Strata Corporation who made the allegations of disturbance; rather it was given by the landlord based on second hand and anonymous complaints. The tenant has not been provided with a reasonable opportunity to reply and I find that the landlord has not proved on a balance of probabilities that there existed sufficient cause to justify the issuance of the one month Notice to End Tenancy. The landlord has not shown that there is cause to end the tenancy and I therefore order that the Notice to End Tenancy dated January 29, 2010 be, and is hereby cancelled. The tenancy will continue. The tenant did not request reimbursement a filing fee and I make no order with respect to the filing fee for this application.

Dated: March 23, 2010.
