

Decision

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for cancellation of the landlords' notice to end tenancy for cause, in addition to recovery of the filing fee. Both parties participated or were represented in the hearing, and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on November 5, 2009. Rent in the amount of \$1,500.00 is payable in advance on the first day of each month. A security deposit of \$750.00 was collected on November 5, 2009. While there is a copy of a move-in condition inspection report in evidence, it is not signed by either party.

The original tenancy agreement bears the name of the current tenant and tenant "TLM." Subsequent to the start of tenancy, however, "TLM" vacated the unit and the unit is now mainly occupied by the tenant and his son.

During a portion of the month while the tenant is away from the unit at camp, another person "G'R'C" lives in the unit with the tenant's son, in order to provide oversight and support. "G'R'C" testified that he has his own residence and that he moves back to his own residence when the tenant returns to the unit from camp.

Arising from a range of miscellaneous concerns, the landlords issued an undated 1 month notice to end tenancy for cause. A manually written notation on the bottom of the notice indicates that it was "Delivered in person to [the tenant] Jan 3 2010." However, in

the narrative documentation submitted by the landlords in regard to the aforementioned notice, it is stated in part as follows:

We went to the house with a 30 day Eviction Notice.....

The son [KC] answered the door finally. When [the landlord] asked for [the tenant], [the son] said that he was passed out that he had partied hard all night. He said it would be impossible to wake him up. Knowing we had to leave the notice with an adult we left, we would issue it in February.

Subsequently, the landlords issued a 1 month notice to end tenancy for cause dated February 24, 2010. A copy of the notice was submitted in evidence, and reasons shown for its issuance are as follows:

Tenant is repeatedly late paying rent

Tenant has allowed an unreasonable number of occupants in the unit

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- 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
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

Tenant has caused extraordinary damage to the unit

Tenant has assigned or sublet the rental unit without landlord's written consent

The tenant filed an application to dispute the notice on March 2, 2010. Evidence submitted by both parties includes photographs.

Analysis

Not all particulars set out in the respective documentary submissions of the parties, or arguments presented by the parties during the hearing, are reproduced here. However, I have turned my mind to all aspects of the information provided and given the particulars careful consideration.

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause dated February 24, 2010.

Section 47(4) of the Act provides that a tenant who receives a notice under section 47 of the Act, may dispute the notice by making an application for dispute resolution within "10 days after the date the tenant receives the notice." In the circumstances of this dispute, the tenant filed an application for dispute resolution on March 2, 2010, which I find is within 10 days of his receipt of the notice.

During the hearing the landlords confirmed that rent has only been paid late on one occasion since the beginning of tenancy.

The parties agreed during the hearing that some of the pictures submitted in evidence reveal a unit which is untidy and, in some places, unclean.

Evidence concerning illegal activity was limited to allegations related to the tenant's son's and the son's friends use of marijuana. Further, there was an allegation that the tenant's son had confessed to the landlord that one of his (the son's) friends had sold marijuana out of the workshop (garage). There is no evidence before me of any charges laid against the tenant or his son arising from allegations of any illegal activity.

The landlords stated that the composition of the neighborhood surrounding the unit tends to be mature, and that the allegedly noisy and frequent comings and goings of the tenant's son and the son's friends have been disturbing to neighbors. Police have also been called to attend the unit. It appears that the landlords' notice to end tenancy is in large part a response to the concerns from neighbors. None of the neighbors were present at the hearing to give direct testimony.

I find, on a balance of probabilities, that the testimony given by "G'R'C" is an accurate and truthful representation of the arrangement whereby "G'R'C" spends a limited period of time at the unit with the tenant's son each month while the tenant is away from the unit at camp. I further find that this arrangement does not constitute an "assignment" or a "sublet," nor does it constitute "an unreasonable number of occupants in the unit."

In the absence of a pattern of late payment of rent, in the absence of direct witness testimony about the comings and goings of persons to / from the unit, in the absence of any conclusive evidence to support the existence of illegal activity, in the absence of evidence which clearly reveals that the condition of the unit reflects something in excess of normal wear and tear, on a balance of probabilities, I find that the landlords have not presently met the burden of proving that the conduct and behavior of the tenant and / or the tenant's son are sufficiently significant or serious to warrant the granting of an order of possession. Accordingly, I hereby cancel the landlords' notice to end tenancy for cause, with the effect that the tenancy continues in full force and effect.

For reference, the attention of the parties is drawn to section 56 of the Act which speaks to **Application for order ending tenancy early**. Both parties are encouraged to familiarize themselves with the legislation which provides, in part, that in certain circumstances an order ending a tenancy early may be made without a requirement that the landlord give the tenant a notice to end tenancy. The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Conclusion

Pursuant to all of the above, the landlords' notice to end tenancy for cause is hereby set aside. The tenancy continues in full force and effect.

As the tenant has succeeded in his application to have the notice cancelled, I hereby order that the tenant may withhold **\$50.00** from the next regular payment of monthly rent in order to recover the filing fee.

DATE: April 19, 2010

Dispute Resolution Officer