

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call to deal with the tenant's application to cancel a notice to end tenancy issued for cause.

Issues(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy for cause?

Background and Evidence

This month-to-month tenancy began in February, 2006. Rent in the amount of \$425.00 is payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected from the tenant a security deposit in the amount of \$212.50.

The landlord testified that he has been very patient and kind to this tenant, but she has been difficult and has been disturbing to other tenants. He stated that she cut someone's clothesline, as well as numerous other disturbances, and the manager has told the landlord that she is uncooperative. A Notice to End Tenancy was issued to the tenant dated April 28, 2010 with an expected move-out date of May 31, 2010.

The landlord further testified that an exit to the building is a common area near the laundry room and the tenant locked the door preventing other tenants from using that area, including the exit door and laundry room. He spoke to the tenant, who promised to not lock it again, but 3 or 4 times since, the landlord has noticed the door locked. Further, the tenant removed her bedroom door and put it in the garage and she is occupying the common area as part of her bedroom. The house has 2 kitchens; the main one and one with a dishwasher and exits to the main kitchen. The landlord told her to put the door back on her bedroom and allow other tenants to use the common

area. The tenant promised to do it, but never did. This happened a couple of years ago, but the door is still off the bedroom and she's still preventing tenants from the use of that common area.

The landlord testified that the police called him about a complaint and asked him to investigate the fire exit. The manager had a conversation with the tenant, and no charges resulted.

Further, tenants had complained about the tenant slamming doors at night and shouting. He stated that she drinks, and sleeps during the day. Also, tenants are calling him in the middle of the night to complain; this happened 5 or 6 times since last year.

The landlord's witness, also a tenant, testified that she was present when the notice to end tenancy was issued. The following morning, the witness got up at 6:00 a.m. and found the tenant in the common kitchen drunk and still drinking. She was banging on the table and told the witness she was going to make her life and the life of the manager a living hell. She was obnoxious and said to the witness, "I know where you work, and I can cause a disturbance at your place of employment." The witness further testified that the tenant uses the common bathroom every day, and is sure to slam doors when the tenant sees the witness in the kitchen. She stated that she has complained to the landlord and the manager, but not in writing.

The manager also testified that the 1st notice to end tenancy was given on April 30, 2010 with the RCMP in attendance. He stated that the tenant had tied her door shut with a bungy cord. She refused to open the door, but the manager was able to open it a couple of inches, and the police cut the cord. They were then able to serve the notice upon the tenant.

He also testified that some of his items had gone missing and he approached the tenant who denied taking them, but stated that a guy was in her room and perhaps he took them. She went to talk to him, said that he had done it in retaliation to her being served with the notice to end tenancy. The guest left and the tenant told the manager that the

man was a crack-head from downtown. He never received his items back, and now keeps his belongings, including some food in his bedroom. The tenant admitted in writing that her guest was responsible for the missing items, and a copy of that note was provided as evidence in advance of the hearing. He also stated that the tenant causes an overall disruption; slamming doors shakes the whole house, and her cursing and yelling is disturbing to all the residents. He stated that he amended the notice to end tenancy by adding paragraphs 4 and 5 about 10 hours after it was served upon her.

The tenant admits locking the door and testified that the landlord knew about it and had no problem with it. She stated that other tenants do have access to the laundry room from the outside of the house, and she has never been told to not lock the door.

She further testified that the morning when the conversation took place between her and the first witness, she had been drunk and asked the witness for items that she had borrowed. She testified that the conversation was quite different than the witness had testified; the witness said to the tenant, "You don't know where I work," and the tenant responded, "Yes, I do." She further testified that the man in her suite that morning was another tenant from upstairs, and after these conversations, she went to bed and slept for 24 hours. She stated that the manager did get his items back. She also admitted to slamming the door that morning, and probably once a month prior.

The person assisting the tenant submitted that the form and content of the notice to end tenancy is not in compliance with Section 52 of the *Residential Tenancy Act*. Paragraph "d)" on the form is split into 3 portions on today's form, and the one issued to the tenant is an old form. As a result, the tenant has not been put on clear notice which section she is expected to be responsive to. She further submitted that the tenancy was reinstated by the landlord because he accepted rent for the month of June, 2010 and issued a receipt without writing on it "For Use and Occupancy Only." The receipt issued on May 22, 2010 for that month's rent did say "For Use and Occupancy Only."

Analysis

Although I have no doubt from the evidence that I have heard the landlord did have cause to issue the notice to end tenancy. The right to quiet enjoyment of other tenants has been affected by this tenant, even by her own admission. However, Section 52 of the *Residential Tenancy Act* states that:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) when given by the landlord, be in the approved form.

I find that the notice issued by the landlord complies with paragraphs (a) through (c), but does not comply with paragraph (e). Further, the landlord saw fit to issue a receipt for rent after the notice was issued "For Use and Occupancy Only," but did not do that for the future rent payment, thereby reinstating the tenancy.

In the circumstances, the landlord may issue another 1 Month Notice to End Tenancy for Cause so long as it is done in accordance with Section 52 of the *Act*, and the landlord issues a receipt "For Use and Occupancy Only" for any rent payments accepted from the tenant after such notice is given.

Conclusion

The notice to end tenancy is hereby cancelled.

I further order, pursuant to my authority under Section 62 (3) that the tenant comply with the *Residential Tenancy Act* and the tenancy agreement, by providing the other tenants with their right to quiet enjoyment, by putting the door back on the bedroom and leaving it there for the duration of the tenancy, by leaving the door unlocked in order to allow other tenants the use of that door to access common areas. Failing to comply with the *Act* may very well result in a notice to end tenancy for cause.

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: July 09, 2010.

Dispute Resolution Officer