

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenant was served with a one month notice to end tenancy for cause (the "Notice") on April 29. The Notice alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The parties further agreed that the landlord lives in a unit directly above the rental unit. The parties were previously involved in a dispute over a notice to end tenancy served on March 8. A hearing was held on April 27 and the notice to end tenancy was set aside.

The landlord and his wife testified that every 2-3 nights they are awakened during the night, usually between midnight and 3 a.m., by the sound of loud voices and banging or crashes coming from the rental unit. The landlord and his wife further testified that the tenant and/or her guests regularly smoke marijuana in the rental unit and that the smell permeates the building. The landlord sent the tenant a number of letters asking her to stop making noise at night and to stop smoking marijuana. The landlord submitted 3 letters dated April 8, 18 and 29, each of which accused the tenant of smoking marijuana in the rental unit and making excessive noise during the night. The landlord and his wife testified that the disruptions at night have been especially stressful as the wife is often unable to go back to sleep after the disruption takes place. They further testified that the smell of marijuana is extreme. The landlord provided a letter from tenants who

live in the unit immediately below the rental unit in which they complain of loud noises at night and the smell of smoke. The letter is dated March 9, the day after the previous notice to end tenancy was served and therefore cannot have been considered in the previous hearing. The landlord testified that he has telephoned the police a number of times about the smell of marijuana, but by the time the police arrive the smell has dissipated and the police took no action.

The tenant and her husband testified that they do not smoke marijuana in the rental unit. The tenant's husband testified that he does not smoke marijuana at all. The tenant stated that on one occasion she had been a bit loud and gone downstairs to apologize to the tenants below, an apology which they accepted. The tenant and her husband claimed that they go to bed by midnight each night and denied making excessive noise. The tenant entered into evidence letters which she claimed were written by her neighbours in which they claim that the tenant has not created a disturbance. The authors of the letters are not identified. The tenant produced two witnesses who have occasionally visited her at the rental unit. The witnesses testified that they have been at the rental unit when the police arrived to investigate the landlord's complaints and that they were not smoking marijuana but were engaged in other activities.

Analysis

The landlord bears the burden of proving on the balance of probabilities that the tenant has significantly interfered with or unreasonably disturbed others. I find that the landlord has met this burden. Although the tenant and her husband deny having made excessive noise, I find that the landlord had no reason to invent such disturbance and I accept that the tenants on the floor immediately below the tenant experienced the same disturbance. I find it more likely than not that the tenant and/or her guests were smoking marijuana in the rental unit and while that in itself may not be grounds to end the tenancy, I find that the odour unreasonably disturbed both the landlord and other occupants.

I note that the decision dated April 28 regarding the March 8 notice to end tenancy set aside that notice, which also alleged that the tenant had significantly interfered with or unreasonably disturbed others, on the basis that the landlord had not warned the tenant that her behaviour was disturbing. There is no legal requirement that the landlord inform a tenant that her behaviour is disturbing others, but even if there were there is ample evidence that the tenant was aware of the landlord's complaints against her. I dismiss the tenant's claim.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. 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.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession.

Dated: June 16, 2010
