

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for an order cancelling a notice to end tenancy for cause, for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of this application.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on February 1, 2010. Rent in the amount of \$1,050.00 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 a security deposit from the tenants in the amount of \$525.00. The rental unit is a suite on the lower level of a house, with another suite in the upper level, which is occupied by the landlord's son and two other tenants.

The tenants testified that on May 5, 2010 they received a handwritten letter dated May 1, 2010 from the landlord, which had been tucked under the door. That letter asked that the tenants move out by the end of May or by the end of June and stated that a family member would be moving into the unit. The tenants emailed the landlord stating that they had spoken with someone at the Residential Tenancy Branch and were advised

that 2 months notice and one months' compensation is required under the *Act*. The landlord responded that she would contact the Branch herself, and then served the tenants with a 1 Month Notice to End Tenancy for Cause, which was received May 27 and dated May 27, 2010. That notice had an expected vacancy date of June 30, 2010, and stated that the tenants had unreasonably disturbed another occupant or the landlord. The tenants disputed the notice and then spoke to the landlord about noise issues, and offered to be out of the residence by June 15. The landlord requested it in writing, so they did put it in writing which also requested return of the security deposit.

The tenants received a second 1 Month Notice to End Tenancy for Cause personally on or about June 20, 2010, a copy of which was provided in advance of this hearing. That notice states that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, and that the tenants have 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. It is dated June 15, 2010 with an expected vacancy date of July 16, 2010.

The landlord testified that within 24 hours of moving into the unit her son complained to her about noise, and the landlord told him he should "let it go" for the month of February, to let the tenants get settled. She testified that large groups of people, being 14 or 15 people, gathered at the residence 2 or 3 times each month. She stated that neighbours had complained to her about noise, the most recent being from a next door neighbour on July 1, 2010. A tenant upstairs audio taped a party, which went from about 1:00 in the afternoon until about 6:00 p.m., and the neighbour stated that she had to go to work in the morning. She stated that the tenants made no effort to refrain from bothering other tenants even after being served with the first notice to end tenancy. She fears she will lose the tenants upstairs, who are students, and stated that some parties last until 5:00 a.m. The landlord further stated that she has had verbal complaints from neighbours 3 times during the month of July and other dates while working in the yard during the past spring.

The landlord also testified that a marijuana pipe was seen in the carport, which proves to her that illegal activity and smoking is going on in the unit. The tenants responded that the pipe belongs to a boyfriend and the tenants would not allow him to take it into the residence, which is why it was in the carport. They also stated that neither of the tenants are smokers and no one smokes inside the unit.

The tenants testified that the landlord served them with a copy of a letter dated May 17, 2010, but they were not served until July 8, 2010. The landlord stated that she did so on the advice of the Residential Tenancy Branch.

The tenants also stated that they received a letter dated May 18, 2010 and that letter states that it's the 2nd written notice, but they did not receive one prior to that. They further testified that one of the tenants in the upper unit told her that the landlord told him to withhold the mail belonging to these tenants, and asked them to prepare a statement to assist the landlord's claim for this dispute resolution hearing.

The tenants testified that they only had one party, which was on Canada Day, and that the tenants upstairs knew 2 weeks in advance. They further claim that the letters provided by the landlord were not written in May, as they are dated, but were actually written in July.

The landlord also expressed some concern that not all of the evidence that she had provided to me had been received. I received 4 evidence packages from the landlord. The first package was received by way of Express Post on June 9, 2010 and contains a letter dated June 8, 2010 from the landlord, a letter signed by the landlord's son dated May 17, 2010, a letter dated May 18, 2010 to the tenants from the landlord, a letter from another tenant dated May 17, 2010 and an undated note from another tenant. The second package was received on July 2, 2010 which contains a 1 Month Notice to End Tenancy for Cause dated June 15, 2010, with an expected vacancy date of July 16, 2010. The third package was received July 7, 2010 which contains a CD recording and legend. The final package was received late, and contains an explanation of the late exhibit, a letter to the Hearing Officer dated June 25, 2010-06-21, a photocopy of a photograph marked drug "bong" pipe, a copy of the letter dated May 18, 2010 to the

tenants from the landlord referred to above, a copy of the letter dated May 17 from the landlord's son referred to above, a printed email, another copy of the letter dated May 17, 2010 from another tenant, referred to above, another copy of the undated note from the other tenant, referred to above.

The tenants also testified that they would agree to end the tenancy if they were given compensation. The landlord offered compensation in an email to the tenants on June 19, 2010, a copy of which was received prior to the commencement of this hearing.

Analysis

Firstly, I find that the tenants feel that they should be given compensation to move after receiving information from the Residential Tenancy Branch that the landlord is required to give compensation if the landlord ends the tenancy for the use of a family member. That is no longer the case, and the landlord is requesting an Order of Possession for cause. Therefore, since the landlord has no intentions of using the residence for a family member, the tenants are not entitled under the *Act* to any compensation.

The first notice to end tenancy was not provided in advance of the hearing, nor at a later date. Therefore, I cannot rule on that notice. The notice to end tenancy issued on June 15, 2010 has two reasons for evicting the tenants. The cause for eviction, being illegal activity, has not been proven by the landlord. I find that no illegal activity has been proven, and the landlord did not have that cause to issue the notice. The second reason for issuing the notice states that the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I heard no oral evidence, other than the disputed evidence of the landlord, that any one has been significantly disturbed. The landlord does not live on the property, and no other occupant attended to give any testimony of disturbance. The tape provided does indicate a party, but the landlord did not dispute the fact that the party was on Canada Day and ended by 6:00 p.m. The neighbour's complaint that she had to work in the morning is hardly justifiable when the party ended early.

In order to be successful with a notice to end tenancy for cause, the landlord must provide evidence that the tenants were made aware that their actions disturbed others and putting it in writing would be helpful. However, I do not accept the evidence of the tenants that only one party was held. I have the letters from the tenants in the upper unit which states that the tenants in the lower unit have been loud right from the beginning of the tenancy. The difficulty with those letters is that the writers were not available to be cross examined on their statements, however the contents of those letters was not disputed by the tenants. Further, I cannot find that the tenants were unaware that other occupants were disturbed, and were given plenty of opportunity to rectify the problem.

The tenants testified that the letter they received on May 18 states that it was the 2nd notice and they had never received the first one. However, that letter speaks to noise complaints, and the tenants obviously did not keep the noise down. The evidence I have before me confirms that from both the landlord and the tenants. It may very well be that the tenants hadn't received the first letter, but they did not adhere to the May 18 letter, and therefore, the landlord's case has been made out.

The *Residential tenancy Act* also states that a notice to end tenancy must be issued prior to the last day of the month, if rent is payable on the 1st day of the month, as it is in this case. Further, the notice must provide for an expected vacancy date of the last day of the following month, at the earliest. The *Act* also states that effective dates that do not comply with the *Act* are changed to a date that does comply with the *Act*. I find that the earliest date, given that the notice to end the tenancy was served in the month of June, 2010, which is not in dispute by either party, is July 31, 2010.

The tenants did not lead any evidence with respect to the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Conclusion

The tenants' application for an order cancelling the notice to end tenancy is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I grant the landlord an Order of Possession effective July 31, 2010. If the tenants 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.

Since the tenants have not been successful with their application, I decline to award recovery of the filing fee.

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 23, 2010.

Dispute Resolution Officer