

DECISION

Dispute Codes CNC

Introduction

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

An agent for the landlord attended, who called a witness, being the manager of the complex, who was affirmed and subject to cross examination by the tenant. The tenant also gave affirmed testimony and was subject to cross examination by the landlord's witness and agent.

Issues(s) to be Decided

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

Background and Evidence

This month-to-month tenancy began on April 1, 2009 and the tenant still resides in the unit. The rental unit is a suite in a 4-plex, and the manager witness lives in that building as well.

Rent in the amount of \$875.00 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 at the time collected a security deposit from the tenant in the amount of \$437.50. A pet damage deposit in the amount of \$250.00 was a requirement according to the tenancy agreement, however the parties do not agree with what was actually paid. The building was sold in October, 2009, and the landlord is relying on documents provided to him by the seller, or previous landlord. The tenant states that she paid \$125.00 on April 1, 2009 and another \$125.00 on April 5, 2009, and is relying on the tenancy agreement, but testified that she does recall paying a total of \$250.00. The landlord's agent testified that only \$125.00 of that was received.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on May 27, 2010, which states that the “tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.” The notice has an expected vacancy date of June 30, 2010.

The witness for the landlord testified that on December 8, 2009 a copy of the new rules for the complex was given to all tenants, and that this tenant received her copy on the 9th or 10th of December.

On April 3, 2010, the witness described an event where he was hosting a child’s birthday party outside in the yard of the rental building and a man appeared on a motor bike yelling profanities and went directly to the tenant’s unit where he continued to yell, and returned outside again still yelling and swearing, which caused a disturbance to the children at the party. He stated that he spoke to the tenant later that day saying that the behaviour of the guest was intolerable and that if this type of disturbance happened again, she would be issued a caution letter.

The witness further testified that on April 26, 2010 he delivered a caution letter to the tenant, which he drafted sometime before that date and sent it to the representative of the landlord for approval. Once approved, it was returned to him, he dated it, signed it and then delivered it to the tenant. A copy of that letter was provided in advance of the hearing. The letter speaks to the rules of the building that the tenant was not complying with, including smoking in common areas, slamming the front door and arguing/swearing.

He further testified that on May 7, 2010 someone went into the tenant’s residence at about 3:00 a.m. and pepper-sprayed the tenant’s son, which woke up other tenants in the building because of screaming and yelling. The next day, he spoke to the tenant and cautioned her that if it happened again, a notice to end tenancy would be issued.

During the May long weekend, the witness was away, but received a text message from another tenant stating that someone had tried to kick in the door of the tenant. He

believes it was the same group of people that had attended the unit when the pepper-spraying incident took place.

The tenant testified that the witness has been nit-picking her since he moved across from her unit. She denied any knowledge of any yelling or profanities in the April 3 incident described by him, and denied that he had any conversation with her about it. She stated that the man was her son's boss who came to ask him to go to work, but when the boy refused to work that day, he left. She stated that her door was open when he arrived and that she did not know there was an incident or that anyone had been disturbed. She did not hear the yelling or the profanities.

With respect to the May 7 incident, she stated that acquaintances of her son went to her residence looking for another boy, and were asked to leave. They were eventually shoved out the door, and upon leaving, one of them grabbed her son's pepper spray from his pack and sprayed it. She called the RCMP who stated there was nothing she could do, but if they returned, to call again. She did not know the boys' names or who they were; they were looking for someone else.

The tenant also stated that she was not home during the May long weekend, and knew nothing about anyone attempting to kick in the door of her unit. She stated that she found out about it when she was served with the notice to end tenancy. She also stated that the witness and his wife screamed profanities at her. She also stated that he and his wife fight loudly often, swearing, screaming at each other and slamming doors. This was not disputed by the witness.

Analysis

The notice to end tenancy states that: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." In the circumstances, the evidence shows that the people who attempted to kick in the door, and the people with the pepper-spray were not wanted

guests, and therefore they were not persons permitted on the property by the tenant. The onus is on the landlord to prove that the reasons set out in the notice can be established. I find that the landlord has failed to establish that the tenant permitted anyone on her property who significantly interfered with or unreasonably disturbed another occupant or the landlord.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

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 20, 2010.

Dispute Resolution Officer