

Decision

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for cancellation of the landlord's notice to end tenancy for cause. Both parties participated in the hearing and gave affirmed testimony.

Issue to be decided

- Whether the tenant is entitled to the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on or about June 1, 2000. Currently, the tenant's portion of rent is \$173.00 per month. A security deposit of \$400.00 was collected at the outset of tenancy.

Arising from various concerns related to the tenancy, the landlord issued a 1 month notice to end tenancy for cause dated May 20, 2010. A copy of the notice was submitted into evidence. The tenant applied to dispute the notice by filing an application for dispute resolution on May 25, 2010. Reasons shown on the notice for its issuance are as follows:

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

significantly interfered with or unreasonably disturbed another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Tenant has assigned or sublet the rental unit / site without landlord's written consent to do so

More particular details related to the above reasons are set out below. Evidence submitted by the parties includes, but is not limited to, letters from the landlord to the tenant, letters of complaint from other residents about noise, memos to file, letters of reference and so on.

Analysis

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/

Section 47 of the Act addresses **Landlord's notice: cause**. In relation to the first aspect of the landlord's notice, as above, the tenant testified that extensive damage to and around the door to her unit occurred during an occasion when her son's guests were visiting him, and one of these guests was intoxicated. The tenant states that her son's intentions were to assist the intoxicated guest, that her son was not directly responsible for the damage, and that her son regrets the incident and is committed to making restitution.

In regard to allegations of "loud music playing and children running around in the suite all hours of the night," the tenant testified that she and her 12 year old grand-daughter are currently the only permanent residents in the unit, and that they are not the source of the noise. The tenant states that noises about which complaints have been made could well be coming from another unit in the building.

As to the landlord's position which is that the tenant is subletting her unit to her son, the tenant testified that her son normally resides in Mission, but because of her current health concerns, in recent times he has often stayed overnight with her in her unit.

The tenant also acknowledged that her son has occasionally stayed in the unit while she herself has been temporarily absent. However, the tenant denied that she has now effectively moved out of the unit and that her permanent residence is now in the Long Beach / Tofino area.

Having carefully considered the documentary evidence and testimony of the parties, I note as follows: **i)** that the source of key information on which the landlord relies for issuance of the notice, which is related to noise and who allegedly resides in the unit, is the building's former resident manager, who was not present to testify at the hearing, and who did not provide a written submission in evidence; **ii)** that letters of complaint from residents are limited to two (April 10 & 15, 2010); **iii)** that the two letters of complaint come from the same residents and these residents share the same unit; **iv)** that the two letters of complaint do not specifically identify the tenant's unit as the source of the noise; **v)** that the period of time to which noise complaints pertain appears to be limited to April and May; **vi)** that no formal complaints alleging noise or other disturbances from the tenant's unit have been forthcoming since service of the notice to end tenancy dated May 20, 2010; and **vii)** that evidence to support the landlord's claim that the tenant has relocated to Long Beach / Tofino is limited to reference to a verbal report from an official in Long Beach / Tofino.

In sum, I find on a balance of probabilities that the landlord has presently failed to meet the burden of proving there is sufficient evidence for cause to end the tenancy. Despite this finding, I make the observation that the tenant has not evidently responded directly to all of the requests for specific information made by the landlord in the letter dated May 5, 2010. The information sought principally reflects the landlord's concern to confirm the residency status of the tenant and the tenant's son. It would seem to be in the best interests of both parties that this information be provided in a forthright and timely manner.

Finally, both parties are encouraged to familiarize themselves with the provisions set out in section 56 of the Act, which speak to an **Application for order ending tenancy early**. This section of the Act provides, in part, that it is not only the conduct and behavior of the tenant, but the conduct and behavior of "a person permitted on the residential property by the tenant," which may lead to a landlord's application for an order of possession.

Further, section 56 of the Act provides that in certain circumstances it may not be necessary for the landlord to give the tenant a notice to end the tenancy in order to obtain an order of possession.

Conclusion

Pursuant to the above, the notice to end tenancy is hereby set aside, and the tenancy presently continues in full force and effect.

DATE: July 13, 2010

Dispute Resolution Officer