

DECISION

Dispute Codes: CNC

Introduction

This application was brought by the tenant seeking to have set aside a one-month Notice to End Tenancy for cause served on May 29, 2010.

As a preliminary matter, the tenant requested that the hearing be adjourned as he had been experiencing considerable stress as a result of the present conflict, supported by a letter from a physician noting that he had recently had to increase the tenant's medication.

Taking into account that the matter in dispute related to the quiet enjoyment and well being of a number of other tenants and the landlord, and the fact that prolonging the dispute would unlikely be in the best interest of any of the parties, I declined the request for adjournment and the hearing proceeded.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began on or about June 1, 2005. Rent is \$533 per month and the landlord holds a security deposit of \$247.50 paid on or about June 1, 2005.

During the hearing, the landlord gave evidence that he had served the Notice to End Tenancy after a series of incidents in which the tenant's screaming and yelling in common areas of the rental building had led to numerous complaints and expressions of fear from other tenants.

Matters came to a head when, on May 16, 2010, the tenant was the subject of three police calls to the rental building, the last of which resulted in his being taken into custody.

The tenant gave evidence that he had been driven to distraction by unwelcomed sexual overtures and constant noise and other disturbances from a female tenant who lived above him. In one instance, he stated that she assaulted him with a slap after a conflict involving her cat.

The building manager gave evidence that he had attempted to investigate the noise complaints, even by attending the area in the middle of the night on two occasions and by conducting a separate test between his own and a comparable apartment to take a measure of sound transference. However, he was unable to confirm the disturbance.

The landlord submitted copies of four current letters from other tenants expressing concern and fear over the subject tenant's outbursts with some reference to earlier incidents. One stated a degree of concern that precluded a visit from a grandchild.

The landlord also submitted copies of breach letters to the tenant concerning screaming disturbances dated July 13, 2006, May 8, 2007 and May 6, 2010 and the building manager stated that on several occasions he had attempted to restore peace by quiet conversation with the tenant.

The landlord gave details of at least two tenants who had moved out of the building because of such incidents, one of whom was the upstairs tenant referred to by the applicant.

He said two others have stated they will have to leave if the subject tenancy continues.

The landlord's written submission described a number of incidents with the tenant, in one of which he stated the tenant said, "If I go down, I'm taking everyone with me," a comment denied by the applicant, but corroborated by another tenant's written submission.

In other incidents, the tenant was said to have confronted and frightened other tenants coming through the front door, and in another, the building manager said the applicant came running at his wife at the front door. The manager stepped between them out of fear for her safety. He said she was in tears as a result of that confrontation as well as a number of others and had urged him to give up his position because of it.

Analysis

Section 47 of the Act provides that a landlord make service a Notice to End Tenancy in circumstances in which, among others, the tenant has significantly interfered with or disturbed other occupants, jeopardized their safety or lawful rights and engaged in illegal activity that affected their quiet enjoyment.

While I accept the evidence of the tenant that the conflict with the upstairs tenant may well have been a contributing factor, I find that the tenant's responses were grossly disproportionate and displayed a lack of awareness or concern for the effect of his actions on others.

In addition, I find that the breach letters of 2006, 2007 and May 6, 2010 clearly indicate a pattern of inordinate reactions on the part of the tenant, the former two predating his conflict with the recently relocated upstairs tenant.

Therefore, I find that the Notice to End Tenancy of May 29, 2010 is lawful and valid and declined to set it aside.

On hearing that determination, the landlord requested and I find he is entitled to an Order of Possession under section 55(1) of the *Act*, effective two days from service of it on the tenant.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant.

July 21, 2010