Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an early end of the tenancy and an Order of possession.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The tenant confirmed receipt of the landlord's evidence package; the tenant did not submit any evidence for reference during the hearing.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Background and Evidence

This tenancy commenced in March 2009, rent is payable on the first day of each month. The tenant rents a suite in a strata development. The current owner purchased the property in October 2009, and assumed responsibility as the landlord.

On July 10, 2010, the landlord issued the tenant a 1 Month Notice ending tenancy for cause, for the reason that the tenant is repeatedly late paying rent. On July 13, 2010, the landlord Applied requesting an early end to the tenancy. The Application indicated

that the tenant was breaching the landlord's liability insurance, changing the locks without permission and refusing entry despite advance notice.

Landlord's Submission

On June 5, 2010, the landlord was informed at an annual general meeting (AGM) of the strata that her tenant was operating a daycare out of the rental unit.

On June 7, 2010, the landlord sent the tenant an email, outlining her concerns in relation to the operation of a daycare in the rental unit, as reported at the strata AGM. The email explained that the landlord had completed some research and found that care of more than two children would require licensing, and that a distinction is made between babysitting and daycare, in relation to liability insurance. The landlord explained that she understood occasional care of more than 2 children, not related to the tenant, would be classed as babysitting and that care of more than 2 children, not related to the tenant, would be classed as daycare. The landlord indicated she was concerned that the tenant was running a daycare business from the home, which would impact the landlord's ability to protect herself from liability.

On June 10, 2010, the landlord hand-delivered a letter to the tenant, asking that she sign, confirming her understanding that she may only provide babysitting in the rental unit. This letter indicated that the tenant needed to confirm her understanding that caring for more than 2 children, who are unrelated to the tenant, on a regular, full-time basis, constituted a daycare operation and that caring for 2 or fewer children on an occasional basis would qualify as babysitting. The June 10, 2010, letter to the tenant explained that the operation of a daycare would contravene the landlord's mortgage terms, insurance policy and the licensing policy of the Town of Gibsons and the Coastal Health Authority.

The landlord did not receive a signed copy of the letter back from the tenant.

The landlord submitted a copy of a July 14, 2010, letter from her insurance company which indicated that operation of a daycare would require the tenant to carry liability coverage. The letter indicated that as it was known the tenant was operating a daycare the landlord must provide a copy of the tenant's insurance to the broker by the end of the month, in order to maintain the force of the landlord's policy. The letter defined babysitting as occasional child care and daycare as a regular occurrence and activity performed for financial gain, or income. The landlord provided the tenant with a copy of this letter and requested proof of insurance. The landlord did not receive the requested insurance information from the tenant.

The landlord provided a copy of a June 27, 2010, advertisement placed by the tenant on a popular social networking site. The posting included the tenant's name, and advertised summer daycare placements, indicating that spaces were open.

The landlord's witness testified that the strata council does not make assessments in relation to the operation of businesses in units, as they are allowed. The strata council is only concerned with any breach of bylaws. The witness alleged that the tenant had breached bylaws related to having children on the roads and that she had been leaving property in the common areas. These reports would have been included in strata council minutes; none of which were submitted as evidence.

The witness confirmed attendance by the police on 4 occasions, all related to this tenancy, and that the authorities were now getting annoyed. On the third occasion the police told the witness they might arrest him, due to allegations made by the tenant. The witness gave the officer a copy of the bylaws, explained that he had removed property from the common area, as he was authorized to do. The officer said she would take a copy of the bylaws to the tenant, for review.

The landlord attempted to have several RCMP officers testify; neither was available and the staff member reached at the detachment declined to reference the file information; and deferred to the officers. The landlord submitted that the tenant has called the RCMP to the property on 3 occasions; that these calls waste the time of the members and form an attempt to harass the other occupants of the complex. On one other occasion the police attended as the result of a call made by the strata vice-president's spouse, due to an allegation that the tenant and her mother acted in a threatening manner.

The landlord testified that the tenant did not provide her with proof of insurance and that effective July 30, 2010, her insurance will have been cancelled, due to her failure to assure her broker that the tenant has adequate liability coverage required when operating a daycare. The landlord is very concerned that she is now vulnerable and liable for any accident that may occur on her property.

The landlord called the Residential Tenancy Branch (RTB) to follow-up on comments made by the tenant that she had submitted previous complaints to the RTB in relation to the landlord's failure to comply with the Act; the landlord was told by RTB staff that there were no previous files or Applications naming the landlord as a respondent.

Tenant's Submission

The tenant testified that the previous property owner was well aware of the fact that she was providing child care services and that the current landlord should be bound by that past agreement.

The tenant stated that the allegations against her are false; that she controls her children and that the allegations are one-sided and unfounded. The tenant believes that strata members are joining forces against her, harassing her and attempting to force her from her home. The tenant denied all allegations in relation to changing the locks,

children on the road and explained that her calls to the police were all founded based on legitimate fear.

The tenant acknowledged placing the daycare advertisement on the web site and referred to the mother of the children for whom she provides care, as her employer. The tenant submitted that she is not operating a daycare, as she looks after 2 children for only 2 to 3 days each week, on a periodic basis. The tenant stated that if she cared for more children she would need to be licensed.

The tenant did receive the landlord's letter dated June 10, 2010, and returned a signed copy to the landlord via regular mail. The tenant does not have insurance and does not have any plans to obtain insurance.

The tenant referenced an email she sent on July 12, 2010, to the strata property management company. The tenant outlined a number of concerns she had in relation to problems with the landlord, some of which included a refusal to repair the home, her repeated letters to the RTB in relation to the landlord, a failure to provide a copy of the strata bylaws and alleged intimidation by the strata president.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that she has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord and her witness, I find that the landlord has met that burden.

In relation to sufficient cause, I have considered the testimony in relation to police calls, the locks to the rental unit, entry to the unit by the landlord and the issues of strata bylaw breaches and find that those incidents do not provide sufficient cause that would support an early end to a tenancy.

I then considered the landlord's submission that her lawful rights have been placed in jeopardy due to the failure of the tenant to either obtain the necessary liability insurance or to cease providing regular care to children in her home.

I do not need to establish if the tenant is running a daycare, for health authority licensing purposes, but only if the tenant is offering a service which the landlord's insurance provider classifies as a business. Whether the tenant should have a daycare licence, is not the issue; the issue is the lawful right of the landlord to be protected from liability should an accident occur on her property due to the services provided by the tenant.

The landlord's insurance broker had clearly stated that any regular care of children, provided for financial gain equates a business and, as such, would require the tenant carry insurance coverage. The parties do not agree on the frequency of care provided

by the tenant to other children; however, I find, based on the internet advertisement placed by the tenant, that she did indeed offer daycare services, not occasional babysitting. The advertisement post-dated the June 10, 2010, request to the tenant by the landlord that she sign, acknowledging the nature of her child care arrangements were not as a daycare.

The tenant had an opportunity to remedy the situation by simply obtaining proof of her own insurance coverage and providing that proof to the landlord. This would have satisfied the landlord's insurance broker, allowing the landlord to ensure she was not liable for any accident that might occur within her rental unit. The failure of the tenant to respond, based on her assertion that she only provides babysitting services is, I find, in direct contradiction to her own advertisement offering daycare spaces. Based on this evidence alone, I would find that the tenant is offering daycare services; as defined by the landlord's insurance broker.

I find, based upon the testimony and evidence before me, that the tenant is offering child care to children, in exchange for financial gain. The tenant referred to the mother of the children she cares for as her employer, which supports the notion that the tenant is providing services for financial gain.

The letter from the landlord's insurance broker dated July 14, 2010, set out the requirements that the landlord must meet in order to maintain her insurance. I find that the insurance company assessment, based on information provided by the landlord, accurately reflects the reality; that the tenant has advertised daycare services which provide income and that this service provision requires the tenant to obtain her own liability insurance.

The tenant was aware of the landlord's concern as early as June 10, 2010. The tenant has failed to mitigate by obtaining the required insurance, the landlord has now been unable to provide the required proof of insurance to her broker and is in potential jeopardy of having lost her lawful right to maintain insurance coverage. The insurance broker's letter clearly indicated that the landlord's insurance would not be of any force, unless proof of tenant insurance was provided by the end of July, 2010.

Secondly, in the circumstances it would be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47, as the loss of insurance places the landlord's lawful right in jeopardy, therefore; I find that the landlord is entitled to an order for possession. A formal order has been issued and may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant.** This Order may be served on thetenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

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: August 06, 2010.

Dispute Resolution Officer