



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, ET

Introduction

This was a cross-Application hearing.

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.

Issue(s) to be Decided

Should a Notice ending tenancy for cause issued on June 24, 2010, be cancelled?

Is the landlord entitled to an Order of possession in relation to an early end of the tenancy?

Preliminary Matter

The landlord has applied requesting an Order of possession based on section 56 of the Act; an early end of tenancy. The landlord testified that she had amended her Application requesting an order of possession based upon the Notice issued for cause on June 24, 2010.

There was no evidence before me of an amended Application and the tenant did not have a copy of the landlord's Application before her. As the basis for the early end of tenancy mirrored the reasons indicated on the Notice issued for cause, I proceeded with the landlord's Application in relation to the Application received by the Residential Tenancy Branch on July 13, 2010 requesting an early end to the tenancy.

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on July 31, 2010.

The reasons stated for the Notice to End Tenancy were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the tenant has put the landlord's property at significant risk; that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant and that the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

Section 56 of the Act, which provides the basis upon which the landlord may request an early end of tenancy, without the benefit of a Notice ending tenancy, duplicates the reasons included on the Notice issued to the tenant.

The tenant has lived on the rental property for three years and entered into a tenancy agreement in her current unit on April 28, 2008. The unit is in a building of 42 other suites.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- That the tenant has been disturbing other occupants of the building;
- That the tenant has allowed people with a "different standard of living" to enter the building;
- That on August 1, 2010, and August 23, 2010, complaints of a loud TV have been made by other occupants;
- That 2 previous occupants have moved out due to the behaviour of this tenant;
- That on June 22, 2010, another occupant heard a smoke alarm, and found that it was coming from the tenant's unit;
- That the occupant entered the tenant's unit and detected a strong odour of burnt oil and smoke;
- That the tenant was sitting on the floor, incoherent;
- That the occupant went to another unit to call the ambulance and fire department;
- That on instruction of the fire department the occupant remained outside of the unit and spoke to the tenant through the door, to no avail;
- That a neighbouring occupant had entered the unit to turn off the oil left on the burner;

- That the tenant overdosed, left oil on the stove, resulting in a threat to the safety of others in the building;
- That the fire department attended at the unit on June 22, 2010, and set up fans for a period of twelve hours, to eliminate the smoke caused by the oil; and
- That the tenant's unit is not reasonably clean.

The landlord stated that on July 11, 2009, she entered the unit, upon written notice given July 9, 2010. The tenant was not home. The landlord took photographs which were submitted as evidence. The photographs show stove top burners that are black and the apartment is a state of disarray.

The landlord testified that the building manager has had communication with the tenant in relation to her behaviour and disturbances caused to others, but could not provide any dates, times or content of these conversations. The building manager was not present at the hearing to provide testimony.

The tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That the landlord or her agent have not talked with her since she filed her Application and that no communication occurred in relation to complaints made in August, 2010;
- That the tenant shuts down her TV and music after 11 p.m.;
- That she did overdose as a result of prescription drugs, on June 22, 2010, and spent time in the hospital;
- That the landlord's agent told her that the ambulance and fire trucks had caused a disturbance to the other occupants;
- That she has no recollection of the events that occurred on June 22, 2010, but that upon return to her unit there was no evidence of a fire or that the unit had been burnt;
- That she could have died as a result of passing out with oil on the stove;
- That other occupants have had incidents occur that required ambulance attendance and that she is not aware of those tenants having been faced with eviction due to disturbance caused by the attendance of the ambulance; and
- That she has not been given any previous warnings in relation to her behaviour or the state of her rental unit.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the landlord has cause to end this tenancy in relation to the reasons contained in the Notice issued on June 24, 2010, which are also the same as the reasons that must be established under section 56 of the Act; for an early end to the tenancy.

Therefore, the Notice issued on June 24, 2010, is cancelled and of no force or effect. Further, the landlord has not provided sufficient evidence that supports the issuing of an Order of possession without the benefit of a Notice ending tenancy.

In determining whether this tenancy should end, I gave extensive consideration to:

- The lack of any evidence of previous warnings given to the tenant for behaviour that disturbed others;
- The disputed testimony in relation to past disturbances caused by the tenant;
- The lack of evidence of any warning or discussion in relation to disturbances caused after the Notice was issued;
- The absence of any evidence that the tenant has engaged in illegal activity;
- The fact that the fire and ambulance attended the unit as the result of a one-time event cause by the tenant suffering an overdose from prescription medication;
- That the smoke alarm systems worked as they should and that a fire did not occur; and
- That there is no evidence the tenant has intentionally placed others or the property at risk and that the overdose was what could reasonably be described as a one-time medical emergency.

Residential Tenancy Branch Policy suggests that a tenant must maintain the rental unit in a state that is in keeping with reasonable health, cleanliness and sanitary standards. The photographs submitted by the landlord indicate that the rental unit may not meet this standard; which I find to be a sensible one. The tenant should be aware that the landlord has raised the issue of cleanliness and that further action could be taken under the Act if the rental unit can be proven not to meet this standard.

Further, the tenant must be aware that caution is required in relation to any future behaviour that could be shown to place others in jeopardy and which could result in the landlord taking further action under the Act.

In relation to the alleged disturbances caused by the tenant to other occupants of the building; the tenant must be aware section 28 of the Act determines that all occupants are entitled to the quiet enjoyment of their units. Reports of disturbances made by other occupants must be investigated by the landlord and the tenant should be given an opportunity to respond to any complaints, in order to determine their validity.

I have enclosed with this decision a copy of *A Guide for Landlords and Tenants in British Columbia* for reference by each party.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated June 24, 2010, and I order that this tenancy continue until it is ended in accordance with the Act. As the reasons for an early end to the tenancy are the same as those contained in the Notice, the landlord is not entitled to an Order of possession under section 56.

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 27, 2010.

Dispute Resolution Officer