



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, LAT

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end his tenancy and an order authorizing him to change the locks on the rental unit. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?

Should the tenant be permitted to change the locks to the rental unit?

Background and Evidence

The rental unit is a three-bedroom unit and is one of four units in a fourplex. The parties agreed that on June 30 the tenant was served with a one month notice to end tenancy for cause (the "Notice"). The Notice alleges that:

- there are an unreasonable number of occupants in the rental unit;
- the tenant or his guests have significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or put the landlord's property at significant risk;
- the tenant or his guest have caused extraordinary damage to the rental unit; and
- the tenant has not repaired damage to the rental unit as required under section 32(3) within a reasonable time.

The landlord testified that the tenant had young woman living in the unit with him who was using drugs and starting fights with neighbours. The landlord alleged that the tenant has caused significant damage to the rental unit, having broken doors, shelves in the refrigerator and damaged walls. The landlord has received complaints from other residents of the fourplex claiming that there are a significant number of people coming in and out of the unit and that some of the other tenants have indicated that they were frightened of the tenant, his sons and his housemate. The landlord alleged that the tenant, his sons or his guests have damaged vehicles of other residents, including slashing tires. M.L., a former occupant of the fourplex who vacated in May, testified that during his tenancy the tenant and his guests frequently smoked marijuana which M.L. found offensive. M.L. claimed that the tenant's son broke the windshield wiper off of his car and damaged a headlight. M.L. testified that he moved from the fourplex in part because of his concern for his family's safety as a result of living near the tenant and one other occupant of the fourplex who also smoked marijuana and drank excessively.

The tenant testified that he had a female guest visit him occasionally but that she never resided in the unit and that when he discovered that she was bothering the neighbours, he asked her not to visit again. The tenant denied having used marijuana and testified that he knew nothing about damage to any vehicles. The tenant testified that while there may be some damage to the interior of the unit, it was caused by his autistic son and he has been paying the landlord for the cost of repairs.

The tenant testified that he is agoraphobic and that he finds it distressing when the landlord comes to the door and asks to be admitted to the unit. The tenant testified that changing the locks will help him feel more secure.

Analysis

The landlord bears the burden of proving that he has grounds to end the tenancy. I find that 4 people in a 3-bedroom unit cannot be considered an unreasonable number of people. While the landlord provided photographs of the exterior of the home, he provided no photographs of the interior of the home, which he claims suffered extreme

damage. Without evidence to corroborate his testimony, I am unable to determine whether the damage can be characterised as extraordinary. Further, the landlord did not dispute that the tenant has been paying him for the cost of repairing damage and I therefore am unable to find that the tenant should be held responsible for performing the repairs when he is paying the landlord for the cost of repairs.

I accept that the tenant and his sons or guests are using marijuana. However, the use of marijuana is not in itself sufficient to establish grounds to end a tenancy. The landlord must prove that its use has significantly interfered with or unreasonably disturbed other occupants. M.L. testified that he was bothered by the marijuana use, but stated that it was not only the tenant who used it but also another resident. It is impossible for me to determine whether the tenant's use was the primary source of M.L.'s disturbance or whether a significant contribution was made by the other resident. As none of the current residents were available to testify, I find insufficient evidence to show that the tenant was significantly interfering with or unreasonably disturbing other occupants.

I find that the landlord has failed to prove that there are grounds to end this tenancy and accordingly I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

I dismiss the tenant's claim for permission to change the locks to the rental unit. The landlord has not entered the unit illegally and should maintain free access to the unit as he has not in any way abused his right to enter.

Conclusion

The Notice is set aside. The claim for permission to change locks is dismissed.

Dated: August 27, 2010

Dispute Resolution Officer

