

DECISION

Dispute codes

CNC

Introduction

This hearing was convened in response to an application filed on July 28, 2010 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated July 19, 2010, with an effective date of August 31, 2010, with the reasons stipulated as:

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

- *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

Tenant has engaged in illegal activity that has or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.*
- *Jeopardized a lawful right or interest of another occupant or the landlord.*

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions and affirmed / sworn testimony.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for valid and sufficient reasons, and that at least *one* reason must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy.

At the outset of the hearing the landlord verbally requested an Order of Possession should I uphold the Notice to End, effective as soon as possible.

Issue(s) to be decided

Is there *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

Background and evidence

The relevant evidence in this matter is as follows. The tenant occupies an apartment in what the landlord describes as a, “supported living, low income building for seniors 55 years or older”. The landlord testified that the housing complex is intended to be a quiet and supportive building, but that the tenant has, through his purported conduct, disturbed the quiet enjoyment of other tenants.

The landlord testified they issued the Notice to End on July 19, 2010 as follows:

1. *Tenant has engaged in illegal activity that has or is likely to:*
 - *Adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.*
 - *Jeopardized a lawful right or interest of another occupant or the landlord.*

The landlord testified that he issued the tenant the Notice to End on July 19, 2010 primarily in response to an incident on or about July 13, 2010 in which the tenant allegedly coerced another tenant of the senior’s building, allegedly of some diminished mental capacity, in negotiating an alleged forged cheque. The landlord testified that the tenant purportedly took advantage of the other tenant. The applicant testified that the matter is with the Police and that he is to make an appearance in Provincial Court in relation to Fraud, sometime in November 2010, although he claims that he has not been charged.

2. *Tenant or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*

- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The landlord testified that acquaintances of the tenant have been heard and seen by other tenants, pounding on the tenant's suite's door in the early morning hours, and being awakened in the early morning by acquaintances of the tenant 'buzzing' their apartments in search of being let in to visit with the applicant. As well, the applicant has disturbed other tenants in the middle of the night with banging sounds, and strong odours of something burning. The landlord further testified that the applicant has disturbed other tenants with his conversations, telling other tenants in the building of how he could place surveillance equipment in their suites, or making a small hole from his suite into the washroom of a neighbouring tenant's suite.

The applicant denies the bulk of the landlord's claims.

The landlord produced 5 witnesses.

Witness 1 – tenant in building

The witness testified under sworn affirmation. He also provided a signed letter into evidence. The witness admitted to being confused sometimes as he has health issues which make him confused. He testified that the applicant came to him one day to his unit, and after spending a lengthy period of time with him he wanted for him to negotiate cash a cheque which had previously been refused by financial institution. The witness testified that the applicant used his bank card to deposit the cheque in his account via his ATM and then used his PIN number to withdraw an amount of cash. The witness testified that he did not know exactly what the applicant told him or had him do as he has never used an ATM to deposit a cheque; but, that the cheque turned out to be fraudulent and the matter was turned over to the Police. The applicant has since paid the cash back to the witness. The witness thinks he was taken advantage of by the applicant. The witness submitted a Police incident number.

The applicant responded by testifying that the cheque transaction was a personal matter with the witness, and of no consequence to the tenancy, and that he did not take advantage of the witness's confusion.

Witness #2 – tenant in building

The witness testified under sworn affirmation. She also provided a signed letter into evidence. The witness testified that she resides in a different suite than the above witness #1, but that she regularly sees him and is a support to him as he is sometimes confused and can be persuaded. The witness testified that she had warned witness #1 not to cash the applicant's cheque and then left witness #1 with the applicant. She then learned that witness #1 had been persuaded by the applicant to negotiate the cheque and give him cash. She testified that witness #1 had to change his PIN number due to this incident. The witness also testified that she was witness to comments by the applicant to another tenant that he could drill a hole from his suite into her washroom next door to him and observe her. The witness testified that she found this very disturbing that he would say this - whether he was sincere or not.

The applicant's response to this witness was that the 'hole in the wall' incident was never meant to be taken seriously.

Witness #3 – tenant in building – direct neighbour

The witness testified under sworn affirmation. The landlord also provided a notation from this witness into evidence. The witness testified that she is the applicant's direct neighbour and on many occasions has heard "pounding" on the applicant's door in the early hours of the night by acquaintances of the applicant wanting entry into his suite. She testified that she has also heard loud noise coming from his suite in the night, and is particularly disturbed by an occasional strong burning odour from the suite, also in the night, which the applicant has told her is from a torch-like device. Both, the noise and odour are disturbing to her and she has spoken to the landlord about it.

Witness #4 – tenant in building – direct neighbour

The witness testified under sworn affirmation. The landlord also provided a signed letter from this witness into evidence. The witness testified that she is the applicant's direct neighbour and that on numerous occasions has been 'buzzed' by guests of the applicant at 2 -3 a.m. in the morning. The witness submitted that several times she got up to find women in the hallway banging on the applicant's door. Upon enquiry, was told that the applicant had told her she could come into his suite anytime, and "talking strange'. The witness also testified that the applicant told her that he could place a camera in her bathroom and observe her, which she found very disturbing and which has caused her considerable distrust of the applicant. She testified that she has heard loud noise coming from his suite in the night.

The applicant testified in response that he uses a torch to tool some of his reclaimed metal, such as stripping plastic from electrical wire. He also does "wood-working" in his suite, as this is a hobby. He also testified that he cannot control his friends or the women to whom the witnesses referred, and that if the landlord has a problem with them, they should obtain restraining orders.

Witness #5 – tenant in building

The witness testified under sworn affirmation. The landlord also provided a signed letter from this witness into evidence. The witness testified that on at least 3 occasions her buzzer has been rung in the early a.m. by individuals looking for the applicant. The witness testified that the commotion in respect to the applicant's suite has negatively affected her sense of security in what, she refers, is meant to be a secure building for seniors.

The applicant's response is that he has told his acquaintances that he cannot let them into the building, and it is open to other tenants to call Police, and open to the landlord to obtain restraining orders.

Some of the witnesses testified that the applicant has attempted to sell them items of questionable origin, and that this conduct has added to their distrust of the applicant.

The applicant testified that he is a “wheeler dealer” who has only good intentions in helping his neighbours acquire items at a good value, and that not all other tenants have an issue with it.

Analysis

On the preponderance of the evidence, and on the balance of probabilities, I prefer the evidence and testimony of the landlord over the evidence and testimony of the tenant. As a result, I find the landlord has met the burden of proof in showing he has sufficient cause to end this tenancy on the basis the tenant has *significantly interfered with or unreasonably disturbed another occupant or the landlord*. Accordingly, I dismiss the tenant’s application to cancel a notice to end tenancy for cause, and I find that the landlord is entitled to an order of possession.

I uphold the landlord’s Notice to End and the tenant’s application to cancel the landlord’s Notice to End is **dismissed** without leave to reapply. The landlord is hereby entitled to an **Order of Possession** as requested, effective according to the Order.

Section 55 of the Act, in part, states, in part, as follows:

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

Conclusion

The landlord’s Notice to end is upheld. The tenant’s application is **dismissed**.

I Order the tenancy will end. I grant an **Order of Possession** to the landlord **effective two (2) days from the day the Order is served upon the tenant**. Should the tenant then fail to comply with the Order, the Order may be filed in 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*.