



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This was an application by the tenant to dispute a one month Notice to End Tenancy for cause. The Hearing was held at the residential Tenancy Office in Burnaby. The tenant and her advocate attended the hearing. The landlord was represented at the hearing by its resident manager.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

The rental property is a subsidized housing complex of some 57 units described as a family housing complex. The tenancy began on September 1, 2008. The tenant resides in the unit with her son and daughter aged eight and nine respectively.

The landlord served the tenant with a one month Notice to End Tenancy for cause. The Notice required the tenant to move out of the rental unit by August 31, 2010. The cause alleged by the Notice was that the tenant, or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and on the further ground that the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

The landlord's representative referred to three warning letters given to the tenant. The first, dated March 26m 2010Complained that the tenant's children set on fire some paper from a recycling bin. The landlord also claimed that the tenants' children were climbing trees and broke some tree branches on the rental property. In a second letter dated May 28, 2010 the landlord stated that the tenant's son was seen throwing rocks onto the roof of the office at the rental property. The tenant's daughter was said to have broken some tree branches. The landlord also alleged that H. G., the father of the tenant's children threatened and attempted to intimidate the resident manager.

By a third warning letter dated July 16, 2010 the landlord alleged that on July 2, 2010 H.G. again attempted to intimidate the resident manager by yelling at him and by attempting to provoke a fight between them.

The tenant acknowledged some of the occurrences described by the landlord. She acknowledged that her children had been present when a fire was started at the recycling bin. She said that there were a number of children who climbed trees on the rental property and the resident manager was singling out her children when they were only two out of a larger group. The tenant's advocate noted that tree climbing is not an unusual behaviour for children.

The tenant said that H.G. is the father of her two children and he is regularly at the rental property to assist her with the children. She said that a dispute occurred between the resident manager and H.G. after the resident manager damaged the tenant's car by allowing the riding mower to travel over a gravelled area and fling stones at her car thereby denting it and chipping the paint. According to the tenant the police have become involved on several occasions and charges may be pending against the resident manager. The resident manager for his part said that the police were taking steps to apply for a peace bond against H.G. No documents were submitted to substantiate these matters.

Analysis and conclusion

The landlord has asserted two grounds for ending the tenancy. With respect to the first, namely: that the tenant, or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, this must relate to the disputes that have occurred between the resident manager and H.G. On the evidence presented there has been some conflict between H.G. and the landlord's representative, but there has been no physical assault and on the disputed evidence I do not find that the events reached a threshold that amounts to sufficient grounds to end this tenancy. With respect to the second ground that the tenant engaged in illegal activity that has, or is likely to damage the landlord's property, there may have been some small damage to a recycling bin and damage to a tree, but I am not satisfied that the tenant's children were the parties that broke the tree branch or that the damage was significant and deliberate.

I find as well that the landlord has not proved on a balance of probabilities that the tenant, or other occupant or visitor has committed an illegal activity. The Residential Tenancy Policy Guideline with respect to illegal activities comments as follows:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's

property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

On the other hand, a very small marijuana grow operation, involving only one or two plants, grown exclusively for personal use, might form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.

I find that the landlord has failed to establish that there is sufficient cause to warrant ending this tenancy. I therefore order that the Notice to End Tenancy dated July 16, 2010 be, and is hereby cancelled. The tenancy will continue. The landlord is free to issue a further Notice to End Tenancy if it determines that there is a reasonable justification for doing so. I caution the tenant that she may expect to receive another Notice to End Tenancy if she, or her children breach any material term of the tenancy agreement.