

DECISION

Dispute Codes MT CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to allow her more time to file her application and to obtain an Order to cancel a Notice to End Tenancy for Cause.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord on July 16, 2010.

The Landlord, Resident Manager, Supervisor, and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to more time to file her application for dispute resolution pursuant to section 66 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to cancel a Notice to End Tenancy pursuant to section 47 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified and confirmed she received the 1 Month Notice to End Tenancy for cause when she was personally served the Notice on June 28, 2010. She stated that she knew to file her application for dispute resolution after she asked her friends. She stated that she was not able to file her application for dispute resolution prior to July 16, 2010 because she had started a full time employment program on July 2, 2010 and she felt she could not discuss this situation with the director of the program until she had been in the program for a few weeks. She confirmed she attends the program from 9:00 a.m. to 4:00 p.m. and that she has access to a computer at school.

The Tenant stated that she applied for this program about one month before being accepted but that she could not remember when she was told she would start the

program on July 2, 2010. The Tenant could not provide testimony about when she made child care arrangements for her child prior to attending this employment program.

Counsel for the Tenant advised the Tenant is currently in a period of transition and is trying to find work. Given this difficult time for the Tenant they are seeking a mediated settlement.

The Landlord replied that they are seeking an Order of Possession effective September 30, 2010 and do not want to proceed with mediation.

The Landlord confirmed the issuance of the 1 Month Notice to End Tenancy for Cause on June 28, 2010 at 7:30 p.m. and advised most of the notices have been issued for noise disturbances. The month to month tenancy began on February 1, 2010 and after several verbal notices the Tenant was issued the first written notice on April 17, 2010. There have been three written notices issued since dated April 21, 2010, May 28, 2010, and June 20, 2010. On May 22, 2010 the Vancouver police were called because one of the Tenant's friends jumped over the back fence and attempted to gain entry into the Tenant's unit. The Resident Manager had thought this person was attempting to break into the Tenant's apartment.

The Resident Manager testified that the Tenant continues to have guests arriving late into the evening with loud music and T.V noise which is indicative of partying. On June 19, 2010, the Resident Manager was approaching the front door when one of the Tenant's guests spit which landed on the Resident Manager's wife and daughter. When he approached the Tenant's guest he realized the guest was smoking marihuana at the front step. The Landlord argued that this was a non-smoking building, no drugs were aloud, and that this was a 30 unit family building.

The Resident Manager was away on holidays during the month of July 2010. Once he returned he had to provide the Tenant with verbal warnings for noise and partying on August 6, August 25, and August 30, and reminded the Tenant that she was going through an eviction and should not be continuing with this behaviour. It was August 6, 2010 that her guests arrived very late, after 11:00 p.m., and they continued to party until 4:00 a.m. the next morning.

The Resident Manager's rental unit is directly below the Tenant's unit so the Resident Manager is the one who has been hearing all of the noise and dealing with the issue. The Landlord advised the Resident Manager has managed this building for over 15 years and has never had a problem with a Tenant above him until now. The Resident

Manager has had at least one conversation with another tenant about this noise issue and has always resided in the same unit.

Legal Counsel for the Tenant stated that it is their position that it is only the Resident Manager who has a problem with the Tenant and had there truly been a noise problem other tenants should have been complaining. He questions the roles played by the Resident Manager, is he a tenant or is he a landlord and why is there no written evidence from other tenants? Also, there is no evidence of written notices in between April and May, 2010, just e-mails between the Landlord's staff.

The Landlord confirmed there was a written notice issued May 28, 2010. The Landlord argued the Resident Manager is not a tenant; rather he is an Agent for the Landlord.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 66 of the Act provides that the Director may extend a time limit established by this Act only in exceptional circumstances. The Tenant argued she was not able to apply for dispute resolution because she started a full time program on July 2, 2010, which runs from 9:00 a.m. to 4:00 p.m. The evidence supports the Tenant received the Notice on June 28, 2010 at 7:30 p.m. which afforded the Tenant two days of regular business hours she could have applied for dispute resolution prior to her attendance at her program. There were also several days where the Tenant could have filed her application for dispute resolution over the internet which is accessible 24 hours per day. That being said I find the Tenant has failed to provide sufficient evidence that she was faced with exceptional circumstances which prevented her from filing her application within the required time frames set out in the Act. Therefore the Tenant's request for more time is hereby dismissed. The Tenant's request for an Order to cancel the Notice to End Tenancy is hereby denied as the Tenant failed to make application to dispute the Notice within ten days of receipt of the Notice.

Upon review of the 1 Month Notice to End Tenancy for Cause issued June 28, 2010, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the

Landlord makes an oral request for an Order of Possession during the scheduled hearing.

Having denied the Tenant's request for more time and dismissing her application to cancel the Notice, I hereby grant the Landlord's request for an Order of Possession.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **September 30, 2010 at 1:00 p.m. after service on the tenant.** This order must be served on the Respondent Tenant and may be filed in the Supreme Court 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: September 07, 2010.

Dispute Resolution Officer