

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on November 15, 2009 for a fixed term of one year. The monthly rent is \$675.00 payable on the first of each month. The rent does not include hydro. The tenancy agreement contains an addendum which states that the building complex provides drug free housing and that the tenant is responsible for transferring the hydro account to his name. The residential complex consists of three buildings which contain eight suites each. The buildings are connected by a common fire escape. The occupants of the buildings are directed not to use the fire escape to access their suites as it interferes with the privacy of the other occupants.

On July 31, 2010, the landlord served the tenant with a one month notice to end tenancy for cause. The notice was served for the following reasons;

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.
2. Tenant has breached a material term of the tenancy agreement.

The landlord testified that she received several verbal complaints from other residents regarding the odour of marijuana emanating from the dispute rental suite. The landlord filed letters of complaint written by three residents.

The letters describe the adverse effects of the marijuana smoke on the health of their children and the disruptive behavior of the tenant.

The landlord stated that on June 02, 2010 a fire broke out in the building that houses the dispute rental suite and some residents were evacuated. Another resident chose to move out temporarily. The tenant was the only occupant on his floor for the period of June 02 to July 15. During this time there were no complaints of the odour of marijuana as there was in the common areas, an overpowering odour of smoke from the fire. A contractor was hired to conduct an ozone treatment to eradicate the smell of smoke. The occupants of the building were advised to use the fire escape temporarily while the treatment was conducted as their main doors would be sealed off.

After the treatment was finished, the landlord stated that she received two verbal complaints that the tenants were still using the fire escape to access the building. The landlord visited the unit to verify that the tenant had the use of his front door. The tenant responded to the landlord's knock on his door and when he opened the door, the landlord found a strong odour of marijuana coming out of the unit. The landlord described two instances of having verbally warned the tenant about its use.

The landlord filed a letter from the contractor who performed the Ozone treatment stating that the desired results were compromised by the continual influx of smoke from tobacco and marijuana in the vicinity of the dispute rental unit and that the treatment would have to be repeated to achieve adequate results.

The landlord also stated that despite signing the addendum, the tenant did not transfer the hydro account to his name and also did not pay his hydro bill.

The tenant denied using the fire escape as a path to and from his rental unit. He also denied using marijuana. However, during the hearing the tenant admitted to using marijuana for medical reasons but stated that he did not do so inside the unit. The tenant stated that he had handed the signed application for the transfer of the hydro account into his name to a property manager, who was no longer employed.

The tenant stated that he was under the impression that the credit in his account had taken care of the hydro bill.

Analysis:

In order to support the notice to end tenancy, the landlord must prove at least one of the following reasons.

- the tenant has adversely affected the quiet enjoyment, security or physical well-being of another occupant or the landlord
- the tenant has breached a material term of the tenancy agreement.

Based on the documentary evidence and the verbal testimony of both parties I find that on a balance of probabilities, the tenant smoked marijuana inside the rental unit on at least one occasion. By signing the addendum, the tenant was made aware of the strict drug free housing policy of the landlord. Therefore I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant 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.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 p.m. on September 30, 2010.

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 21, 2010.

Dispute Resolution Officer