

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel the landlord's One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Residential Tenancy Act* (the *Act*). The landlord testified that the tenant had misidentified the landlord's name in the style of cause for the tenant's application and confirmed that his company was managing the property. I have revised the landlord's name accordingly. At the hearing, the landlord requested an Order of Possession to take effect as soon as possible.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant the One Month Notice to End Tenancy for Cause on August 3, 2010. The tenant testified that he handed the landlord his application for dispute resolution on August 5, 2010. Both parties confirmed receiving these documents from one another. I am satisfied that these documents have been served in accordance with the *Act*.

Preliminary Matters- Previous Dispute Resolution Officer's August 30, 2010 Decision

At the commencement of the hearing, the tenant's representative noted that a Dispute Resolution Officer (DRO) made a finding on what she described as similar evidence on the landlord's application for an early end to tenancy on August 30, 2010. She asked that I review the DRO's August 30, 2010 findings of fact regarding that matter and asked that I not take into account evidence common to the two applications. During the course of the hearing, the tenant's representative also requested that I disregard any events that occurred following the landlord's issuance of the landlord's 1 Month Notice to End Tenancy for Cause on August 3, 2010.

As requested, I have reviewed the August 30, 2010 decision of the DRO who heard a different application from these parties. I find that there is a significant difference between the tenant's current application to cancel a 1 Month Notice to End Tenancy for

Cause and the landlord's previous application for dispute resolution to end the tenancy early and to obtain an Order of Possession on that basis. In the previous decision, the DRO stated, "In order to establish his claim the landlord must prove not only that he has cause to end the tenancy but also that it would be unreasonable or unfair to make him wait for a one month notice to end tenancy for cause to take effect." The higher standard required to obtain an early end to tenancy is apparent in the previous DRO's assessment of the following evidence presented by the parties:

...I accept that the tenant wrote on the bathroom mirrors but find that such action does not create an emergency situation whereby the tenant must be immediately evicted...

In dismissing the landlord's previous application, the DRO found "that the landlord has failed to prove that it would be unreasonable or unfair to make him wait for a one month notice to end tenancy for cause to take effect."

The present application is from the tenant and seeks cancellation of a different application from the landlord for a One Month Notice to End Tenancy for Cause than was considered by the previous DRO. I do not find that the landlord's failure to obtain an Order of Possession for an immediate end to this tenancy in his previous application prevents him from presenting new evidence regarding matters that led to the issuance of the One Month Notice to End Tenancy for Cause. However, I agree with the tenant's representative's assertion that it would be unfair to give weight to evidence presented by the landlord of occurrences that happened after the issuance of the August 3, 2010 notice to end tenancy.

Issues(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled?

Should the landlord be issued an Order of Possession?

Background and Evidence

The parties agreed that the tenant first entered into a month-to-month tenancy at this property on or about July 1, 2009. At that time, he was living at Room 62. The tenant testified that the landlord allowed him to move to Room 47 in the rental premises on July 3, 2010.

The landlord presented written evidence, including letters from staff members and a lengthy chronology of the landlord's interaction with the tenant from November 14, 2009 until August 10, 2010. As noted above, I have not considered the landlord's evidence regarding incidents that occurred after August 3, 2010. Similarly, I have not considered the landlord's submission of a petition by tenants in the building where the tenant resides because it was signed by them between August 5 and August 10, 2010.

Eight employees of the landlord provided written and sworn testimony during this hearing regarding the actions and behaviours of the tenant. Much of this testimony was directed at specific incidents involving interactions between the tenant and the landlord's staff. Once more, I have not given weight to the landlord's evidence involving incidents that occurred after the 1 Month Notice to End Tenancy was served.

The tenant admitted to writing on a bathroom mirror and calling one of the female staff members a derogatory name after he maintains she provoked him. He testified that all the accusations against him were false and that he has done nothing wrong to warrant the notice to end tenancy. He said that he has no criminal record and no charges have been laid against him.

Analysis

The landlord has issued a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act* alleging 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;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord put the landlord's property at significant risk.*

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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant has caused extraordinary damage to the unit/site or property.

Having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the *Criminal Code*. It may include an act prohibited by any statute 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 DRO and to the other party 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.

I find that the landlord gave insufficient evidence of illegal activity by the tenant. I find that the landlord has not met the burden of proof to establish that this tenancy should be cancelled on the basis of illegal activity by the tenant.

Extraordinary Damage

With the exception of writing on a mirror in the bathroom, which can be remedied, I find that the landlord has failed to prove extraordinary damage. I find that the landlord cannot cancel this tenancy on the basis of extraordinary damage.

Significant Interference with or Unreasonable Disturbance to the Landlord

The landlord's staff members provided many examples to support the landlord's claim that the tenant has significantly interfered with or unreasonably disturbed other occupants in his building, and in particular, the landlord's staff. While many of the specific incidents occurred after the notice to end tenancy was issued on August 3, 2010, others clearly occurred prior to that date.

I am satisfied that the landlord has proven that the tenant has demonstrated a long-standing pattern of threats and harassment towards the landlord's staff and of unreasonable disturbance to those who live at this property. In making this determination, I rely on the undisputed list of incidents entered into testimony by the landlord and sworn testimony provided by the landlord's staff. I find this evidence far more credible than the tenant's testimony denying all of the allegations about him.

I find that the landlord has met the burden of proof to establish that this tenancy should be cancelled on the basis of the tenant's significant interference with and unreasonable disturbance of the landlord's representatives.

Serious Jeopardization of the Health or Safety of the Landlord

Based on the evidence presented, I accept the landlord's assertion that the tenant's actions and behaviours seriously jeopardize the health or safety of the landlord's staff. I am satisfied that the landlord's staff members are genuinely concerned about their

health and safety given the statements they attribute to the tenant. I accept the evidence provided by many of the landlord's staff members regarding the tenant's threats to their physical safety and well-being. Again, I find this evidence more credible than the tenant's denial of these allegations.

I find that the landlord has met the burden of proof to establish that this tenancy should be cancelled on the basis of the tenant's serious jeopardization of the health and safety of the landlord's representatives.

Conclusion

I find that due to the conduct of the tenant the landlord was correct in issuing a 1 Month Notice to End Tenancy for Cause. I therefore dismiss the tenant's application to cancel the Notice to End Tenancy with the effect that this tenancy ended on the effective date set out on that Notice, September 3, 2010.

At the hearing of this matter the landlord requested an Order of Possession. Having dismissed the tenant's application to cancel the Notice to End Tenancy, I will therefore issue a 2-day Order of Possession. The landlord is provided with a formal copy of an Order of Possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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*.