



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, PSF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated August 18, 2010 and for an Order that the Landlord provide services or facilities.

At the beginning of the hearing, the Tenant said that the Landlord provides both rental accommodations and rehabilitation services. In particular, the Tenant said he was placed with the Landlord under the Vancouver Island Brain Injury program. The Landlord did not deny this but claimed that he voluntarily provided the Tenant "with life skills." The Tenant said he is unsure if the Landlord receives remuneration for his services but claimed that he receives a financial statement from the Landlord which shows a deduction each month for long term care and that the Landlord receives rent directly from social services. The Landlord admitted that he was the Trustee for the Tenant until approximately one month ago but insisted that he only provides accommodations under the tenancy agreement. I find that there is insufficient evidence to conclude that the tenancy agreement includes rehabilitative services and as a result, I find that the director has jurisdiction to hear the Tenant's application in this matter.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Have services or facilities that are required under the Act or agreed to by the Parties been restricted or terminated?

Background and Evidence

This tenancy started in September 2008. On August 18, 2010, the Landlord said he had an agent serve the Tenant in person with a One Month Notice to End Tenancy for Cause dated August 18, 2010. The grounds set out on the Notice were as follows:

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;

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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; and

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

The Landlord admitted that he mistakenly ticked off the box which alleges the Tenant has engaged in an illegal activity.

The Landlord said that on August 18, 2010, he received a call about water flooding into the underground parking area of the rental property through the ceiling. The Landlord said the flooding was tracked back to the rental unit where he found that the Tenant had left a tap running. The Landlord said that the water caused damage to the carpeting in the rental unit and that some drywall may have to be removed. The Landlord claimed, however, that there was extensive water damage to the suite below the rental unit because the occupant of that suite was not home when the flooding occurred. The Landlord also claimed that the suite below the rental unit required extensive repairs by a restoration company so the occupant of that suite had to move. The Landlord further claimed that there have been similar incidences (of a less significant nature) involving the Tenant in the past and that he has tried to work with the Tenant but to no avail.

The Tenant admitted that he accidentally left a tap running on August 18, 2010 but claimed that he thought it had only been running for approximately 3 hours and therefore he argued that the Landlord exaggerated the alleged damages. In particular, the Tenant claimed that in his unit only the kitchen floor and a 3 foot area of the abutting carpeted area were wet and that this was removed with a steam cleaner. The Tenant said he viewed the unit below him the following day and could see no evidence of a water leak. The Tenant also said that the water in the garage area had accumulated in an area where there were no living accommodations above. The Tenant argued that during his tenancy 3 hot water tanks had burst in other suites which had caused water damage to other areas of the rental property.

The Landlord admitted that there had been a burst water tank approximately one year prior in the rental property but claimed that there had not been one recently. The Landlord claimed that he had photographs of the water damage allegedly caused by the Tenant but admitted he had not submitted them as evidence at the hearing and could not say why he had not submitted them.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the



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tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord claimed that as a result of the Tenant leaving water running, part of the rental property was significantly damaged by water. The Tenant admitted that he accidentally left water running but denied that it caused significant damage to the rental property as alleged by the Landlord. In the absence of any corroborating evidence (such as the photographs allegedly in his possession) from the Landlord regarding the incident on August 18, 2010 or any incident prior to that date, I find that the Landlord has not provided sufficient evidence to show that grounds exist to end the tenancy. As a result, the One Month Notice to End Tenancy for Cause dated August 18, 2010 is cancelled and the tenancy will continue.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated August 18, 2010 is granted. The Tenant provided no evidence in support of his application for an Order that the Landlord provide services or facilities and that part of his application is dismissed with leave to reapply.

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 16, 2010.

Dispute Resolution Officer