

Decision

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated August 28, 2009.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled. This requires a determination of whether the tenant or persons permitted on the property by the tenant:

- significantly interfered with and or unreasonably disturbed other occupants or the landlord or;
- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end Tenancy under the Act.

Preliminary Matters

The following three preliminary matters were introduced by the respondent:

Applicant Not a Party

The Respondent landlord testified that the application was not submitted by the tenant and pointed out that the tenant's mother had signed the application for dispute resolution on behalf of the tenant. The participant representing the tenant, (hereinafter known as "the tenant"), testified that she was the caregiver for the tenant who has a medical condition and looked after his interests. I find

that rule 8.3 of the Residential Tenancy Rules of Procedure provides that a party to a dispute resolution proceeding may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation I find that, In the interest of avoiding prejudice to the tenant, who has a mental condition and who also could not attend due to being hospitalized, this matter should proceed.

Disputed Notice After Deadline

According to the Act, a tenant can dispute a One Month Notice to End Tenancy for Cause issued under section 47 within 10 days of receiving the Notice. The landlord testified that the Notice was served in person to the tenant on August 25, 2010, but was not able to provide witness testimony from the person who actually served the Notice. The copy of the One-Month Notice in evidence had an initialed notation from the tenant indicating that it was not received by the tenant until September 20, 2010. The Application to dispute the Notice was received at the Residential Tenancy Office on September 23, 2010. Given the discrepancy I find that I am not able to accept the landlord's verbal assurance regarding the date of service and even if I did, I would have to find it necessary to allow the tenant more time to dispute the Notice under section 66(1) of the Act being that there were exceptional circumstances. It was established by both parties that the tenant had suffered a medical setback at some point during the period in question and was incapacitated.

Tenancy Has Already Ended

According to the landlord, the tenant had already voluntarily ended the tenancy before this hearing either by mutual consent or by accepting the Notice. According to the landlord, the tenant was preparing to vacate in accordance with the Notice. The landlord testified that the tenant had surrendered his key and even signed a Notice that he was vacating and that his possessions can be removed and stored by the landlord. No evidence of the written consent was submitted. The tenant's representative at the hearing disputed that this was the case and was adamant that although the tenant was hospitalized, he had not surrendered possession voluntarily to the landlord. Given the disputed verbal testimony and lack of documentary evidence submitted by the landlord, I found that the hearing must proceed on the premise that the tenant has not yet vacated nor agreed to permanently vacate the unit.

Background and Evidence

The tenant submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated August 25, 2010 indicating that the landlord was ending the tenancy because the tenant had significantly interfered with and or unreasonably disturbed other occupants or the landlord and seriously jeopardized the health, safety or lawful right of another occupant or the landlord. Also submitted into evidence by the landlord was a written statement and copies of communications and reports chronicling incidents that occurred during the tenancy.

The landlord testified that the tenant was involved in repeated incidents where the landlord's staff was threatened with bodily harm by the tenant. The landlord testified that despite several written warnings, copies of which were in evidence, the tenant's conduct persisted and the landlord finally felt it necessary to end the tenancy under Section 47 of the Act. .

The tenant's representative testified that the landlord had never gone so far as to try to terminate the tenancy in the past despite similar conduct. The tenant's representative stated that, considering the tenant's disability, such outbursts would be expected and dealt with. The tenant felt that the landlord should take into account problems with medication being given or withheld by service-providers. The tenant was of the opinion that the landlord should have sought assistance from the mental health team and not allowed matters to get out of hand. The tenant believed that the One-Month Notice was not warranted under the Act and should be cancelled.

Analysis – Notice to End Tenancy

It is necessary to establish whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47 of the Act.

The Residential Tenancy Guidelines provides information about what may constitute "significant Interference" including serious examples of:

- unreasonable and ongoing noise;
- persecution and intimidation;
- engaging in destructive or violent behaviour

In regards to the term, "unreasonably disturbed", Black's Law Dictionary defines "unreasonable" as:

"Irrational; foolish; unwise; absurd; preposterous; senseless;... immoderate; exorbitant; ...capricious; arbitrary; confiscatory."

In this instance I find that the conduct of the tenant had met the threshold to be considered as having significantly interfered with or unreasonably disturbed the landlord and others. Regardless of the reasons or causes behind the tenant's actions, the fact is that the Act demands that a tenant refrain from bothering or threatening others particularly once a written warning has been given.

Given the above, I find that the tenant's Application requesting that the Notice be cancelled is not supported under the Act and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), 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

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application without leave. I hereby grant the landlord an Order of Possession effective Monday, November 1, 2010 at 1:00 p.m.

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: October 2010.

Dispute Resolution Officer