



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy, and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord company attended the hearing and the landlord called one witness, being the resident manager of the rental unit. The parties each gave affirmed testimony and were given the opportunity to cross examine each other and the witness on their evidence. All information and testimony has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the tenant entitled to an order cancelling a 1 Month Notice to End Tenancy for Cause?

Background and Evidence

This month-to-month tenancy began on July 1, 1999 and the tenant still resides in the rental unit. Rent in the amount of \$846.00 per month is payable in advance on the first day of each month, and there are no rental arrears. On June 18, 1999 the landlord collected a security deposit from the tenant in the amount of \$50.00

The landlord's agent testified that the tenant has allowed an unreasonable number of occupants to reside in the rental unit, and referred to the tenancy agreement, a copy of

which was provided in advance of the hearing. He stated that all terms apply even though boxes appear beside each term and the only term checked off is a term regarding pets. He stated that term #1 deals with additional occupants, and the tenant has had a roommate living with him for over 3 years. Further, numerous tenants have complained to the landlord's agent as well as to Fraser Health that the roommate has been feeding stray cats and other animals around the apartment building. The activity has resulted in racoons, stray cats and rodents to frequent the property, leaving excrement on patios and causing the animals to fight for the food.

The landlord's agent further testified that the roommate assaulted a previous resident manager in the elevator of the building, the police were called but no charges resulted.

The landlord's witness testified that he started working there in October, 2009. He stated that the roommate was not a tenant, and he spoke to her. He then checked the files and discovered that the previous manager did not accept her as a tenant as a result of the incident in the elevator.

He further testified that a tenant had complained to him about the roommate feeding animals, and that animal feces and nutshells prevent him from using his patio. Another tenant told him that he had witnessed racoons fighting in front of the balcony with cats. Another tenant had complained about his patio chairs being damaged and that rodents have caused holes in the furniture and have damaged the potted plants. The witness testified that he spoke to the roommate and she said she wasn't feeding the animals, but was observed leaving food and water and still does so to date.

He further testified that Fraser Health gave the landlord a notice with respect to the by-law on feeding animals. He also told the roommate on many occasions that she is not welcome, cannot park her car there, and is not welcome to visit her friend. She does not take it seriously and will not stop. She has very clearly disturbed 3 other occupants who have complained verbally, in writing and have taken pictures. Another 2 tenants have verbally complained to the resident manager.

The landlord issued a breach letter to the tenant, a copy of which was provided in advance of the hearing, which contains no date. The letter advises the tenant that he is in breach of the tenancy agreement, paragraph 6B (feeding animals), term 1 (unreasonable number of occupants in the suite) and unreasonable disturbance of another occupant. The tenant requested clarification in writing, and the landlord issued a letter dated August 10, 2010 explaining each breach contained in the first letter.

The landlord issued a 1 Month Notice to End Tenancy for Cause on September 27, 2010 which contains an expected date of vacancy of October 30, 2010 and states that the tenant has allowed an unreasonable number of occupants in the unit; 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 and has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant testified that the roommate resided there since February, 2004, and he told the landlord's agent on November 1, 2010 that the tenant moved out and that he had removed all feeding dishes. He got the keys back from the roommate on October 31, 2010. She visits the tenant from time to time, but also visits other tenants within the building.

The tenant further testified that the first he had heard that the roommate was not considered a tenant was when he received a breach letter from the landlord. He asked for clarification of the breach letter, and the landlord replied and then gave him a second breach letter. He also stated that the landlord allowed her to store some items in the building. He also invited the landlord's agent to inspect his unit and told the resident manager that he would leave work early to accommodate that, but the resident manager was not willing to do an inspection after 5:00 p.m. because he doesn't get overtime.

The tenant feels he has done all that he can with respect to salvaging the tenancy. He told her she had to move; she did move out; he collected the keys from her and

removed the feeding dishes. When questioned about telling her that she is not welcome on the property, the tenant stated that he has not told her that.

In rebuttal, the landlord's agent stated that he does not believe that the roommate visits anyone else in the building. She's been witnessed on the property on November 8, 10, 24 and 25, and has a means of getting into the parking garage. The landlord's position is that if she does not visit this tenant, she is not a guest on the property, and then he can deal with the issue as a trespass.

Analysis

The *Residential Tenancy Act* states that a landlord can issue a 1 Month Notice to End Tenancy for Cause if the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I do not accept the evidence of the landlord's agent that all terms in the addendum to the tenancy agreement apply. If all terms apply, all boxes should be checked off or no boxes should be present at all.

In the circumstances, the roommate resided in the rental unit for several years before the landlord issued a notice to end the tenancy. Therefore, I cannot find that the first reason listed on the 1 Month Notice to End Tenancy for Cause is justified. I do, however, find that the tenant has permitted a person on the property who has significantly interfered with or unreasonably disturbed another occupant. I also find that the roommate, or guest, has seriously jeopardized the health or safety or lawful right or interest of the landlord and other occupants. The roommate was told on many occasions that she is not to feed the animals, and that doing so invites problems for other tenants. The tenant has not told her that she is not welcome on the property.

Conclusion

Based on the above facts I find that the landlord is entitled to an Order of Possession. 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.

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: December 07, 2010.

Dispute Resolution Officer