



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, OPR, RP, FF

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Cause; an Order that the Landlord comply with the Act, regulation or tenancy agreement and make repairs to the rental unit; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

The Notice to End Tenancy was posted on the Tenant's door at 9:00 p.m., November 25, 2010. The Tenant testified that he received the Notice the next morning because of his work hours.

The Tenant served the Landlord with the Notice of Hearing documents by leaving the documents with an agent of the Landlord at the Landlord's place of business on December 6, 2010.

The Landlord served the Tenant with copies of his evidence by handing the documents to the Tenant on December 15, 2010, at 4:43 p.m. at the resident manager's office.

Background and Evidence

The Landlord's agent gave the following affirmed testimony and documentary evidence:

- This tenancy began on October 1, 2010.
- On November 22, 2010 the Tenant was trying to get into the building. He was extremely drunk and could hardly stand up. Another tenant was in the lobby.

The Tenant screamed at the other tenant to open the door. The other tenant refused to do so because she felt afraid of the Tenant.

- On November 23, 2010, at 3:30 a.m., the Tenant attempted to forcefully enter another tenant's suite. The Tenant was intoxicated.
- On November 24, 2010, the Tenant was in a common area, staring menacingly at another tenant. The Tenant was intoxicated.
- On November 25, 2010, at 7:45 p.m., the Landlord saw the Tenant sitting on the floor in a hallway on the 5th floor. The Tenant lives on the 2nd floor. The Tenant was intoxicated. The Tenant went outside the building for a cigarette. The Landlord called the police, who attended and took the Tenant away for being intoxicated in a public place.
- On November 25, 2010, at 9:00 p.m., the Landlord issued a One Month Notice to End Tenancy for Cause and posted it on the Tenant's door.
- On November 26, 2010, at 3:00 a.m., a visitor in one of the suites on the 11th floor answered a knock on the door. The Tenant was standing at the doorway and when the visitor told him she was trying to sleep, the Tenant tried to force his way in. The Tenant was intoxicated.
- On December 7, 2010 at 11:00 a.m. another tenant saw the Tenant collapsed on the stairs near the second floor door. The other tenant called the Landlord, who assisted the Tenant back to his suite. The Tenant was intoxicated.

The Tenant gave the following affirmed testimony and documentary evidence:

- The Landlord is lying about the incidents.
- The Tenant was not drunk on the evening of November 25, 2010. The police took him away because the Landlord lied about him. The Tenant was placed in cells for three hours and then released.
- There is only one elevator in the building and it does not work properly. On the occasions that the other tenants complain about him trying to gain access to their

suites, the Tenant was trying to visit friends in the building and got confused about what floor he was on because all of the floors look the same.

- The person who answered the door on one of the occasions is not a tenant, but is a street person. She was drunk when she answered the door.
- The Tenant does not drink every day and is not a criminal.
- The Landlord has threatened the Tenant.
- The building is in need of repairs to the carpet.

The Landlord gave the following reply:

- The only threat he issued to the Tenant was when he warned him he would issue a Notice to End Tenancy if the Tenant continued to disturb other occupants or the Landlord.
- The Landlord does not recall any discussions with the Tenant about carpet needing repairs.
- All of the doors at the rental property are clearly numbered.
- The Landlord asked for an Order of Possession effective 1:00 p.m., December 31, 2010.

Analysis

The Tenant testified that he received the notice on the morning of November 26, 2010, because of his work hours. The Tenant did not mention the fact that he had been arrested on November 25, 2010, and released several hours later.

The Tenant testified that the police took him away because the Landlord lied about him being drunk. The Tenant testified that the police kept him in a cell for a few hours and then released him. I find it probable that the Tenant was arrested for being drunk in a public place and was kept in custody until the police deemed him sober enough to be released.

The Landlord provided written testimony of two different tenants and one visitor to the building, which relate to incidents observed by these individuals. In all cases, the Tenant was observed to be intoxicated. The Landlord's own observations on 4 incident reports indicate that the Tenant was intoxicated.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed facts. The test of the truth of the story must align with the balance of probabilities and, in the circumstances before me, I find the version of events provided by the Landlord to be highly probable. Considered in its totality, I favour the evidence of the Landlord over the Tenant.

The Landlord seeks to end the tenancy because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find that the Tenant has significantly interfered with other occupants or the Landlord on several occasions and that the Landlord's Notice is a valid notice.

I dismiss the Tenant's application to cancel the Notice to End Tenancy.

Section 55(1) of the Act states:

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the testimony of the parties, I am satisfied that the Tenant received the 1 Month Notice to End Tenancy on November 26, 2010. I find that the effective date of

the end of the tenancy is December 31, 2010. Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., December 31, 2010.**

The tenancy is ending and therefore, I dismiss the remainder of the Tenant's application.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession effective 1:00 p.m., December 31, 2010. This Order must be served on the Tenant and 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 21, 2010.
