



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This was an application by the tenants to cancel a Notice to End Tenancy for cause dated November 1, 2010. The hearing was conducted by conference call. The tenants participated with their advocate and the named landlord, who is actually the resident manager of the apartment building, also participated.

Issues(s) to be Decided

Should the one month Notice to End Tenancy for cause be cancelled?

Background and Evidence

The rental unit is a two bedroom apartment in a two storey wood frame apartment building in Burnaby. The tenancy began on May 1, 2005. Current monthly rent is \$900.00. Utilities are included in the rent. The tenancy agreement provided that the rental unit would be occupied by two adults only.

On November 1, 2010 the landlord served the tenants with a one month Notice to End Tenancy for cause. The notice required the tenants to move out of the rental unit by December 5, 2010, however if the Notice is upheld the earliest day that it could be effective would be December 31, 2010.

The reasons given for issuing the notice were that the tenants have been repeatedly late paying rent, that the tenants have allowed an unreasonable number of occupants to

reside in the rental unit and that the tenants have engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submitted records of rent payments in the form of ledger records, copies of rent receipts and bank deposit records. The landlord testified that the tenants pay their rent in cash and he always prepares a receipt recording the date that payment has been made and gives a copy to the tenants. He testified that the receipts accurately record the dates that payment has been made although the tenant may not receive the receipt immediately upon making payment. The landlord submitted receipts and gave the following evidence as to the timing of rent payments:

Month	Date of payment
January, 2009	January 2, 2009, balance on January 9, 2009
February, 2009	February 3, 2009
March, 2009	March 4, 2009
June, 2009	June 2, 2009
July, 2009	July 2, 2009, balance on July 21, 2009
January, 2010	January 4, 2010
March, 2010	March 4, 2010
August, 2010	August 3, 2010
September, 2010	September 2, 2010

He landlord testified that since June, 2010 the tenants have lived in the rental unit with their two grandchildren. Since August, 2010 the tenant's daughter, has also lived in the rental unit and there are five people, two children and three adults in the rental unit. The landlord contended that this is an unreasonable number of occupants.

The landlord referred to several incidents when there were disturbances at the rental unit and the police were called to attend. The tenants acknowledged that one of the incidents was caused by a fight between the tenants when the female tenant

summoned the police. She testified that another incident was caused by her neighbour who had stolen money from her.

Analysis and Conclusion

With respect to the ground alleged that the tenants have engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, there is evidence that there have been disturbances, but the landlord has not identified any illegal activities engaged in by the tenants that resulted in the disturbances; the police have attended but there is no evidence that any charges have been laid. I find that there is insufficient evidence that the tenants have engaged in any illegal activity to uphold the notice on this ground.

The landlord takes the position that five occupants in a two bedroom apartment is unreasonable. The landlord's view may be coloured by the fact that utilities are included in the rent and the additional occupants must necessarily increase the burden on the landlord. I consider five occupants in this two bedroom unit to be on the margin of unreasonableness, but I am not prepared to say that the line has been crossed in these circumstances where the occupancy is said to be temporary, occasioned by the tenant's ill-health and according to the tenants the daughter and her children are actively seeking other accommodation. I find that the evidence does not support the ground that there are an unreasonable number of occupants in the rental unit.

With respect to the ground that the tenants have been repeatedly late paying rent, the tenants' rent is current and there are no arrears. The tenants acknowledged in their testimony and in their written submissions that rent has been paid late on a number of occasions. The tenants' advocate submitted that with perhaps two exceptions in the past 16 months rent has always been paid within 5 days of the first of the month; he submitted that because there has been no other eviction notice regarding late payment of rent: "This notice therefore, must have no effect in this regard."

The Residential Tenancy Act provides by section 47 (1) (b) that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Policy Guideline #38 states that: "Three late payments are the minimum number sufficient to justify a notice under these provisions." The policy guideline also contains the following comments:

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision

The *Act* does not define what constitutes "repeatedly late". The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent. The tenant said that the landlord allowed him to pay his rent late in 2008 because his ability to pay rent on time was affected by a workplace injury and workers' compensation claim, but I was not advised of any exceptional circumstances with respect to late payments in 2009 and 2010. The evidence shows that the tenants have been late paying rent on six or more occasions since January, 2009. I find that the tenants have been repeatedly late paying rent. I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant's application. The landlord has requested that I issue an order for possession. Section

53 of the *Residential Tenancy Act* provides that a Notice to End Tenancy that purports to end a tenancy on a date that does not comply with the *Act* will be deemed changed to the date that does comply with the required notice period. The earliest day that the landlord's Notice to End Tenancy could be effective is December 31, 2010. I find that the landlord is entitled to an order for possession effective December 31, 2010 after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Dated: November 26, 2010.
