

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with the Tenants' application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice). Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenant served the Landlord with the Notice of Hearing documents, in person, at the rental property on February 8, 2011. The Landlord served the Tenant with copies of his documentary evidence on February 10, 2011.

Issue to be Decided

Should the Notice issued January 28, 2011, be cancelled?

Background and Evidence

The rental unit is a room in a single-occupancy building. The Tenant pays rent in the amount of \$375.00 per month. The Tenant paid a security deposit in the amount of \$160.00 at the beginning of the tenancy, which started on August 1, 2006.

The Landlord served the Tenant with the Notice on January 28, 2011, at the front counter in the rental property.

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

Tenant has allowed an unreasonable number of occupants in the unit; and

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord testified that the Tenant is allowing persons to stay in his room when he is not there which is against the rules at the rental property. The Tenant became verbally abusive to the Landlord when he was advised that he should not be signing people he doesn't know into the building.

The Landlord testified that the Tenant is providing people with access to the building when those people are barred from entering the building, which is a security issue. The Landlord alleged that one of these people threatened the Landlord's staff by shouting, swearing and banging on windows when the staff refused them access to the building. Another person was seen smoking a crack pipe at one of the entrances to the building.

The Landlord alleged that between June 12, 2010 and October 2, 2010, there were the following incidents reported in the daily log:

Date (mm/dd)	Time	Nature of incident
06/12	3:00 am	"D" at entrance claiming the Tenant took her money. Tenant speaks with her, and then leaves and doesn't come back. "D" (who is barred from the building) leaves at 3:30 and returns at 7:00 am, screaming to see the Tenant.
06/26	4:25 am	Unknown person entered the building and when asked who he was visiting, replied that he was signed in to the Tenant's room, along with a person named "S". The Tenant's room was checked and there was a girl sleeping on the Tenant's bed. The Tenant was not there and the girl was asked to leave. The Tenant returned shortly thereafter and was upset that the Landlord had entered his room when he was not there.
07/26	pm	"V" (female visitor of Tenants for 3 months) barred for asking another tenant for a crack pipe.
08/01	1:00 am	"blond girl, half naked" leaves building, not sure who she was visiting.
08/01	5:50 am	"blond, half naked girl" returns with the Tenant and is denied access to the building.

08/02	11:30 am	Verbal warning to Tenant about guests not signing in, and about not allowing guests to stay in his room when he isn't there.
08/21	6:30 am	"E" comes to visit the Tenant and becomes angry when staff does not phone the Tenant for her. She curses and kicks at the building and does not leave until police are called.
09/23	3:30 am	Tenant attempts to take a person into the building who has been denied entry by staff. Staff denies entry again and Tenant becomes verbally abusive towards staff member, making threats.
10/02	12:50 am	Tenant attempts to come into the building with a barred person ("E"). "E" is denied access and Tenant becomes angry, making threats to the staff person, and pounding the door. The Tenant leaves, but comes back a few minutes later and continues with verbal abuse and threats.
10/03	2:00 pm	"E" tried to come into the building and was refused. She became verbally abusive to the staff and punching the window. Tenant showed up and opened door for "E". Staff member stopped entry. "E" left and Tenant started yelling obscenities at the staff person. Police were called and warned Tenant he could be evicted if he keeps behaving in this fashion.

The Landlord testified that on October 3, 2010, an Incident Report was logged. On October 4, 2010, the Tenant was warned about his profane language and about letting strangers and barred people into the building. The Tenant was advised that "E" was barred from entering the building.

Between October 21, 2010, and January 28, 2011, the following incidents were reported in the daily log:

Date (mm/dd)	Time	Nature of incident
10/21	4:00 am	"Young female" waiting outside for the Tenant. Starts to smoke crack cocaine in front of the back door. Staff member asks her to leave and reminds her she is already barred from the building.

01/16	5:40 am	Tenant's TV is on, volume loud. Tenant is not home, or does not answer door.
01/28	3:30 am	"J" is at door, asking staff to call the Tenant. Staff member declines to call the Tenant, due to the hour.
01/28	5:26 am	Staff member is doing janitorial work and notices the Tenant watching him. Staff member hears the sound of someone running quietly. Staff member goes to office to check surveillance tape. Notices Tenant enter building, and another person remains at the door. Time corresponds with the time the Tenant was watching the staff member. Then person waiting at the door (identified as "J") runs inside the building and up the stairs. Staff phones the Tenant and asks him to have "J" leave the building. The Tenant denies knowing anything about "J" entering the building. Police are called.
01/28	6:30 am	The Tenant leaves the building, still denies knowing where "J" is.
01/28	pm	Gave the Tenant his eviction notice. Tenant becomes verbally abusive and throws the remainder of his lunch on the floor at the front counter. The Tenant threatens to damage the staff member's truck.

The Landlord asked for an Order of Possession effective March 31, 2011, in order to give the Tenant more time to find alternate accommodation.

The Tenant's advocate submitted that the Landlord has failed to provide sufficient grounds for ending the tenancy. He submitted that there was no proof that the people who were attempting to gain entrance to the rental property were invited there by the Tenant, or allowed in by the Tenant, and that the Act states that the Tenant or a **person permitted on the property by the Tenant** must significantly interfere with or unreasonably disturb another occupant or the Landlord.

The Tenant's advocate further submits that there is insufficient proof that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. He stated that the Landlord was vague about the nature of the threats made against the Landlord's agents. The Tenant's advocate submitted there was no evidence that the Tenant had disturbed other tenants in the rental property.

Analysis

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

I find that the Landlord has not provided sufficient evidence that the Tenant has allowed an unreasonable number of occupants in the rental unit. Neither has the Landlord provided sufficient evidence that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant.

However, on the balance of probabilities when taking the totality of the Landlord's evidence into consideration, I find that:

- the Tenant knew that a person was barred from the rental property for security reasons and attempted to bring that person into the rental property on September 23, 2010; October 2, 2010; October 3, 2010; and January 28, 2010, and that in so doing, the Tenant compromised the security of the building and significantly interfered with the Landlord; and
- the Tenant verbally abused and threatened the Landlord's agents on September 23, 2010, October 2, 2010, October 3, 2010, and January 28, 2011, and that in so doing, the Tenant unreasonably disturbed the Landlord.

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

During the Hearing, the Landlord requested an Order of Possession effective March 31, 2011. Section 55(1) states:

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.

Pursuant 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., March 31, 2011.**

Conclusion

The Tenant's application is dismissed.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., March 31, 2011.** 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: March 01, 2011.
