

DECISION

Dispute Codes:

CNC

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Cause.

Both parties gave affirmed testimony at the Hearing.

It was determined that:

- The Tenant was personally served with the Notice to End Tenancy on February 18, 2011;
- The Landlord was served with the Notice of Hearing documents and copies of the Tenant's documentary evidence within the timeframes allowed; and
- The Landlord did not provide the Tenant with copies of his documentary evidence.

I explained to the Landlord's agents that I would not be considering their documentary evidence because it was not provided to the Tenant. I invited the Landlord's agents to provide me with affirmed testimony with respect to the documentary evidence.

Background and Evidence

The Landlord's agents gave the following affirmed testimony:

The Landlord has received written complaints from two other tenants in the building about the level of noise, number of people, and violence in the rental unit. The other tenants do not wish to be identified because they are fearful of retribution from the

Tenant. The Tenant and people he invites to his home are very noisy late into the night. The Tenant is often intoxicated and fights with his girlfriend.

The Landlord read the letters aloud. One complainant stated that there is yelling and loud music coming from the rental unit at all hours of the day and night. There are drugs left in the hallways and people coming and going. This complainant has a child and is concerned particularly about the drugs.

The other complainant has been living in the rental property since September, 2010. This complainant stated that there has been noise coming from the rental unit since he moved in and that it is getting worse, occurring at all times of the day, all days of the week.

The Landlord's agent testified that since issuing the Notice to End Tenancy, the disturbances have escalated. On March 4, 2011, the Police were called and attended to break up a fight. The Tenant's girlfriend came out of the rental unit bleeding. On March 6, 2011, the Police were called again because of an assault that occurred at the rental unit.

The Tenant gave the following affirmed testimony:

The Tenant denied assaulting his girlfriend and testified that it was his girlfriend who was arrested on March 6, 2011. The Tenant testified that he broke up with her approximately two weeks ago. He stated that he did not invite her, or other friends, onto the property and that they got into the building via a broken back door entrance. The Tenant testified that he told the Landlords about the broken back door 2 months ago, but they didn't fix it. The Tenant testified that he told the Landlord that he didn't want to see his girlfriend and that she shouldn't be allowed in the building.

The Landlord's agents gave the following reply:

The Landlord does not control which visitors come into the building. The visitors are let in by the occupants. The Landlord's agents denied being told about the broken back

door entrance. They stated that they found out about it at the beginning of March and it was fixed on March 8, 2011.

Analysis

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 Tenant testified that the back door entrance was broken for 2 months and that he had informed the Landlord, but the Landlord did not fix it. The Tenant provided no documentary evidence of any written complaint he made to the Landlord about the back door. The Landlord's agents testified that they discovered the broken back door on their own and that it was fixed shortly afterwards. I find the Landlord's version of events more probable. The Landlord would have derived no benefit from leaving its building unsecured.

The Tenant testified that he did not invite people into the building, but that they entered through an open back door. He testified that the back door was broken for a couple of months. Both of the complainants talk about loud noise coming from the rental unit at all hours of the day and night. One of the complainants states that the noise has been an ongoing problem since September 2010, when he moved into the rental property. I find it probable that the Tenant did invite people to his home and that those people and the Tenant were unreasonably disturbing the other occupants.

The Landlord seeks to end the tenancy because the Tenant, or people invited or permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find that the Tenant and his

guests have unreasonably disturbed other occupants and that the Landlord's Notice is a valid notice.

I dismiss the Tenant's application to cancel the Notice to End Tenancy. The effective date of the end of tenancy is March 31, 2011.

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.

(emphasis added)

After providing the parties with my Decision orally, I asked the Landlord's agents if they had any questions or comments. Neither of them requested an Order of Possession, so I have not provided one with this Decision.

Conclusion

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

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 16, 2011.
