



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB

Introduction

This matter dealt with an application by the landlord to obtain an Order of Possession.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on June 07, 2011.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the reasons given in the One Month Notice to End Tenancy for cause?
- Is the landlord entitled to an Order of Possession because the tenant has breached an agreement with the landlord?

Background and Evidence

Both parties agree that this tenancy started on November 01, 2008. The tenant pays a monthly rent of \$500.00 which is due on the first day of each month.

The landlord states the tenant has breached the crime free addendum to the tenancy agreement. The landlord states this agreement signed by the tenant states the tenant or any person affiliated with the tenant shall not engage in any criminal activity on the premises including but not related to any drug related criminal activity (including smoking marijuana) or any solicitation (sex trade workers and related nuisance activity).

The landlords' agent testifies that the tenant has been smoking pot on the premises, the tenant has allowed a guest in his unit who has fraudulently obtained welfare by signing the landlords name on the shelter information and he has allowed a "hooker" to hang around his unit. When questioned, how the landlord knew this person was a 'hooker' she states this is information the tenant told her.

The landlords' agent states she also served the tenant with a One Month Notice to End tenancy in person on May 02, 2011. This Notice has an effective date of June 02, 2011 and gives the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit
- 2) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- 3) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (i) has adversely affected or is likely to adversely affect the quiet enjoyment.

The landlord states the tenant has allowed another person to live in the rental unit without obtaining permission from the landlord. The landlords' agent states she only discovered this when she obtained a cheque from welfare for this person. The landlords' agent also states the tenant has a lot of visitors coming and going from his unit at all hours of the day and night which has significantly disturbed other tenants residing in the building. The landlords agent testifies that she has received complaints from other tenants verbally as they are reluctant to put anything in writing and states they have complained to her that many of

these visitors are drug dealers who come and go at least four times a day. The landlords' agent testifies the tenant smokes pot in his unit and does not try to hide it. The landlords' agent agrees she has not seen the tenant smoking pot herself but has smelt marijuana coming from his unit and has received complaints from other tenants about this drug use.

The landlord seeks an Order of Possession based on the reasons given in the One month Notice to End Tenancy or because the tenant has breached the crime free housing addendum.

The tenant testifies that the landlords' agent only recently asked him to sign a tenancy agreement and a crime free housing addendum to this agreement. I note that the agreements provided in the landlords documentary evidence show the date signed as of April 30, 2011. The tenant states only recently the landlord came to the tenants unit and offered him money to move out. The tenant states he declined this offer and a week later he was served with the One Month Notice to End Tenancy.

The tenant testifies that he has let another person live in his unit with him but states he was unaware that this person may have fraudulently signed the landlords name on the shelter information sheet to obtain rent payments from welfare. The tenant also states that he does have a female friend that visits him but denies that she is a "hooker" or that he told the landlord this.

The tenant disputes that he has visitors coming to his unit at all hours of the day and night. He states he is allowed visitors to his unit and he has received no complaints from other tenants. The tenant states other tenants in the building have written character references for him but states he did not provide these in evidence.

The tenant does not dispute that he smokes pot in his unit but does dispute that he sells or distributes it. The tenant has not disputed the One Month Notice to End Tenancy but states he wants to continue to live at the unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that there is insufficient evidence that the tenant has significantly interfered with and unreasonably disturbed other occupants of the rental property. However, I find that by the tenants own admission he does smoke marijuana at the property. Although I accept the landlord only asked the tenant to sign the crime free housing addendum on April 30, 2011 the smoking of an illegal substance in British Columbia is still considered to be an illegal act as alleged on the One Month Notice. I also find by the tenants own admission that he has allowed another person to occupy his unit without the landlords permission. While this may be argued that this is not an 'unreasonable' number of persons the fact remains that the tenant did not seek permission or approval before allowing this other person to move into his unit. I further find although the tenant may or may not have been aware that this guest has obtained welfare payments by signing the landlords or the landlords agent name on the shelter information the fact remains that a tenant is responsible for the actions of any invited guest on the rental property and as such this persons actions of fraudulently signing the landlords name to obtain welfare payments may be considered an illegal act.

Consequently, I find that there are grounds for issuing the One Month Notice to End Tenancy for Cause dated May 02, 2011. I also find that the tenant did not dispute the Notice within the 10 allowable days as indicated on page two of the Notice and is therefore considered to have accepted the Notice. Consequently, the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*. Under s. 90 of the *Act*, the One Month Notice to End Tenancy for Cause must give one clear months notice to end the tenancy. Therefore the effective date to end the tenancy is amended to June 30, 2011 rather than June 02, 2011 pursuant to s. 53 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court 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: June 28, 2011.

Residential Tenancy Branch