



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began in September 1985. The current rent is \$775.00 due on the first of each month. The rental unit is an apartment located in a building which houses a total of ten suites on three floors. The building is over 30 years old.

On May 20, 2011, the landlord served the tenant with a one month notice to end tenancy for cause. The notice to end tenancy alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant, has put the landlord's property at significant risk and has not done required repairs of damage to the unit.

The landlord stated that there have been several incidents over the 25 years of tenancy and he has served the tenant with a notice to end tenancy prior to the one the tenant is disputing. The landlord stated that he demonstrated a great deal of tolerance in dealing with the tenant and even cancelled the prior notice to end tenancy, in order to give the tenant an opportunity to comply with the terms of the tenancy agreement.

Apart from the fact that the landlord and tenant have personalities that do not get along, the landlord stated that some other residents have also complained about the inconsiderate nature of the tenant.

The landlord stated that the tenant has difficulty taking responsibility for her actions and was in denial most of the time. When confronted with any problems that she had created, she would argue and get confrontational.

The tenant got into disputes with her roommate and the arguments created noise disturbances. In addition, the roommate while intoxicated has caused disturbances by banging on doors and ringing other residents' buzzers. The roommate apologized in writing to all the residents that he had disturbed.

The landlord filed letters written by other residents that describe the behavior of the tenant and her roommate, the loud arguments and the noise disturbances. One resident also describes an incident when the tenant was doing laundry at 1:30am.

The tenant stated that she was not aware that she was causing disturbances and that the laundry incident was a one- time occurrence. She also added that she had not created any noise disturbance while she retrieved her load from the laundry and that the resident who complained was a light sleeper. The tenant did admit that there was a police incident after a fight with her roommate in October 2007.

In 2009, the tenant's sink overflowed and leaked into the lower unit. The landlord stated that at the time of the leak, the tenant told him that the tap was dripping. The landlord sent in a plumber who found no problem with the tap and suggested that the sink had overflowed. The landlord stated in his evidence that the tenant denied causing the overflow. However the tenant stated in her evidence that she did not deny causing the overflow but tried to explain to the landlord that there were other problem with the pipes "sweating" and the taps dripping.

The landlord stated that there were several other minor incidents of the tenant causing disturbances to the other tenants e.g. parking a scooter in the building walkway causing an obstruction to the other tenants, noise disturbances etc.

Sometime in early 2010, the tenant reported a missing tile in the washroom. The landlord offered to fix it – but the tenant advised him that she would take care of it if he provided her with the materials. The landlord did so. In May 2011, while conducting repairs to the plumbing of the building, the plumber attended the rental unit regarding an unrelated matter. During that visit, the plumber found water trailing inside the wall to the ground floor of the building. The source of the leak was an area in the washroom of the rental unit that had four missing tiles. The landlord stated that this has caused internal damage to the walls and has resulted in added repair costs. The tenant stated that she was not given a chance by the landlord, to explain why she didn't fix the single tile. The tenant did not provide any explanation at the hearing.

Upon discovering this problem, the landlord served the tenant with a notice to end tenancy for cause.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant and /or has put the landlord's property at significant risk and/or has not done required repairs of damage to the unit.

Based on all the evidence before me, I find that most of the complaints from other residents, originated from incidents that occurred prior to January 2011. Based on the testimony of the tenant herself, I find that she still believes that she has not caused any noise disturbances and that using the laundry past midnight disturbed the other resident, because she was a light sleeper. Even though I find that the tenant has difficulty taking responsibility for her actions, I also find that there have been no incidents in the past six months that would justify ending a tenancy on the grounds of significantly interfering with or unreasonably disturbing other occupants.

However, the tenant has caused damage to the landlord's property in the past and more recently by neglecting to follow up on her commitment to replace the single tile that was missing. Over the next 18 months, an additional three tiles went missing and water trailed from her unit on the top floor all the way to the bottom, causing internal damage. The missing tiles were discovered when doing other plumbing related work which means that the tenant did not report the damage and the unreported seepage of water could have caused even more damage to the walls if it hadn't been discovered by the plumber.

I therefore find that the tenant not only caused damage to the landlord's property but also put the property at risk by failing to act on her offer to repair the missing tile or report the additional missing tiles. As a result, water seeped through the walls, which caused substantial internal damage to the building walls. Therefore I find that the tenant did not carry out the required repairs of damage to the unit and by failing to report the additional missing tiles, also failed to mitigate the damage.

Based on the testimony of both parties, I uphold the notice to end tenancy and dismiss the tenant's application to set it aside.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant has failed to prove her case and must therefore bear the cost of filing this application.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 p.m. on September 30, 2011.

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: July 18, 2011.

Residential Tenancy Branch