



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. One of the co-tenants and the property manager appeared at the hearing.

I was provided a copy of the Notice to End Tenancy by the tenant; however, neither party provided supporting documentation for this proceeding. Therefore, this decision is based upon verbal testimony provided by both parties.

This application names a corporate entity and an individual as the landlord. I heard that the named individual is the property manager and is herein referred to as the property manager in this decision.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The tenancy commenced December 1, 2010 and the tenants are required to pay rent of \$675.00 on the 1st day of every month. The property manager left a 1 Month Notice to End Tenancy for Cause (the Notice) in the tenants' mailbox on June 7, 2011. The Notice indicates the reason for ending the tenancy is because the:

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

I noted that the Notice does not include a service address for the landlord or property manager. The property manager explained that the corporate landlord is located in Vancouver and that the property is managed by her from her personal residence in Penticton. If a tenant wishes to serve the landlord with documents the tenant calls the telephone number of the property manager provided on the Notice and she will attend

the residential property to receive documents. However, in this case, the tenant was able to locate the property manager at her residence and personally serve her at home. I cautioned the property manager that a Notice to End Tenancy requires the landlord to provide a service address for the landlord.

I heard from the property manager that the tenants' adult drug-addicted daughter is responsible for unreasonably disturbing other occupants by frequently yelling and screaming at the tenants and others on the property. I heard that the tenants were verbally warned on numerous occasions that they must keep the noise down. In addition, the police have been called to the residential property at least 14 times in May and June 2011 to deal with the tenants' daughter. The property manager testified that she had obtained a list of those police calls; however, the landlord did not submit those as evidence.

The property manager claimed that she had received numerous verbal complaints from other occupants about the disturbing behaviour they have endured and the property manager is in possession of four written complaints. The property manager did not submit the written complaints as evidence but was permitted the opportunity to read them during the hearing and the tenant was permitted the opportunity to respond to them.

One written complaint was received in April 2011 which involved the female tenant and another tenant having a fight. The property manager stated she could not determine who was responsible for the fight as each tenant was blaming the other and that the dispute was resolved by telling the tenants to stay away from each other. The remainder of the written complaints were received in July 2011. The property manager read from the written complaints. One of the written complaints referred to the disturbing behaviour over the "last couple of months" while others did not provide for any dates or time frames.

The tenant acknowledged that there has been several instances of disturbance caused by their daughter in the past and that the police were called. However, the tenant submitted that the situation has significantly improved since they refused their daughter entry into the building and their unit. The tenant estimated that the last time they permitted their daughter in their unit was between 3 – 5 weeks ago and that their daughter and son-in-law now have their own place to live. The tenant submitted that other tenants have been letting their daughter into the building. The tenant has tried telling other occupants to not let his daughter in; however, the tenant believes the other tenants should also be told not to let his daughter in by the landlord. Further, the tenant denied the police were called to their unit 14 times in May and June 2011 because of

the tenants' permitting their daughter on the property. The tenant submitted that people likely assume their daughter is on the property because she is visiting their unit; however, that is often not the case.

The landlord acknowledged that she told the tenant of another unit to stop letting the tenants' daughter in the building or they will also be served an eviction notice. The landlord believes that person has stopped letting in the tenants' daughter. The tenant submitted that there are others that also let his daughter into the building.

Analysis

Where a Notice to End Tenancy comes under dispute the landlord has the burden to prove, based on the balance of probabilities, that a valid Notice was issued and that the tenancy should end for the reason(s) indicated on the Notice.

A Notice to End Tenancy given by a landlord must be in the approved form. The approved form requires the landlord to provide a service address for the landlord. This is required so that a tenant may serve the landlord with documents personally, by fax or by mail. Failure to provide a service address may invalidate the Notice in many cases; however, I am satisfied the tenants in this case were able to obtain the property manager's address and serve her personally with hearing documents. Therefore, I proceed to consider whether the landlord has met the burden to prove the tenancy should end.

Although the landlord introduced evidence concerning the tenants' daughters' behaviour in mid-June through July 2011 such behaviour took place after the Notice to End Tenancy was issued. In order to end this tenancy based upon the Notice to End Tenancy before me, I must be satisfied that unreasonably disturbing behaviour occurred before the Notice was issued. I must also be satisfied the person causing the unreasonable disturbance was on the property because she was permitted on the property by the tenants.

Having considered all of the testimony before me I find the landlord has not met the burden to prove the above criteria. I have reached this conclusion by considering the following factors:

1. the landlord acknowledged that at least one other occupant has been known to permit the tenants' daughter on the property;

2. the landlord did not call witnesses or provide copies of the written complaints from other occupants that would support the landlord's position;
3. the complaints that were read by the landlord did not indicate specific dates or time frames of significant disturbances and were written in July 2011;
4. the landlord did not provide copies of police reports or other evidence to support the landlord's position of when the police attended the property or that the police attended the property because the tenants' daughter was in the rental unit or at the property because she was permitted there by the tenants.

In light of the above, I cancel the Notice to End Tenancy issued June 7, 2011 with the effect that this tenancy continues.

I appreciate how frustrating this situation is for both parties and I find it highly probable that the future success of this tenancy will depend on the tenants' ability to control the behaviour of the persons they permit on the property. Future disturbances by persons the tenants permit on the property may be grounds for the landlord to issue another Notice to End Tenancy to the tenants. Therefore, in order to protect this tenancy, it is imperative the tenants take every necessary step to ensure they do not allow guests on the property that are likely to cause a disturbance.

As tenants are responsible for the behaviour of persons they permit on the property, the landlord may consider advising all tenants in the building of this. If a person is on the property that is not a guest or visitor of a tenant the landlord may wish pursue various alternatives to deal with trespassers such as hiring security personnel, hiring a resident manager, and calling the police to have trespassers removed from the property.

Conclusion

The Notice to End Tenancy issued June 7, 2011 has been cancelled and the tenancy continues.

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 13, 2011.

Residential Tenancy Branch