



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT, CNC, O

Introduction

This Hearing was scheduled to hear the Tenant's application to be allowed more time to apply to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued August 30, 2011; and to cancel the Notice.

All parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by hand the documents to an agent of the Landlord's on September 26, 2011 at 1:15 p.m. The Tenant did not provide any documentary evidence to the Residential Tenancy Branch or to the Landlord.

It was established that the Landlord provided the Tenant with its documentary evidence on October 18, 2011 at 3:13 p.m. by handing the documents to the Tenant.

Preliminary Matter

The Tenant is applying to be allowed more time to file his application. The Notice he seeks to cancel was issued under the provisions of Section 47 of the Act. Section 47(4) of the Act provides that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

The Landlord's agent CA testified that she served the Tenant with the Notice on August 30, 2011 at 6:02 p.m. by handing the Notice to the Tenant at the rental unit. The Landlord's agent SA testified that it is the Landlord's practice that the CA would e-mail SA and confirm service of documents once they had been served. The Landlord's agent SA testified that the Landlord's agent CA e-mailed such confirmation of the Notice.

The Tenant testified that the Landlord's agent CA handed him the Notice on September 10, 2011, late at night.

The Tenant testified that he tried to file his application earlier but he was ill, his advocate was ill and not in her office, and that the Residential Tenancy Branch required further

information from the government agent and the Tenant before the application could be filed.

Section 66(1) of the Act provides that the director may extend a time limit established by the Act in exceptional circumstances. The Tenant is an elderly man who required the aid of an advocate. The Tenant completed his application for dispute resolution on September 16, 2011 and filed it on September 20, 2011. The application required some corrections to be made, which were completed on September 26, 2011.

The Tenant's advocate did not dispute that she had been ill. Based on the affirmed testimony of the Tenant, I am satisfied that he and his advocate were ill and unable to file the Tenant's application within the 10 day time frame allowed. I granted the Tenant's application to be allowed more time to file his application, and the Hearing proceeded.

I accept the Landlord's agents' testimony with respect to service of the Notice and their business practice. I find that the Tenant was served with the Notice on August 30, 2011.

Issue(s) to be Decided

Should the Notice be cancelled?

Background and Evidence

This tenancy began on April 1, 2011. A copy of the tenancy agreement was provided in evidence by the Landlord.

The Landlord's agents gave the following affirmed testimony:

The Landlord's agent TS testified that the Tenant is in breach of a material term of the tenancy agreement by allowing another occupant to live in the rental unit without the permission of the Landlord. He stated that the Landlord gave the Tenant notice to remove the occupant on July 5, 2011, but that the Tenant has refused to do so. A copy of the warning letter was provided in evidence.

The Landlord's agent CS testified that the unauthorized occupant ("Kelly") knowingly let people who were banned from entering the building, into the rental property. She stated that these people are friends of evicted tenants who had purposefully set fire to the building and were therefore banned. CS testified that the Tenant was provided written warning on July 5, 2011, that Kelly must stop letting these people into the building. This written warning was contained in the same letter that TS referred to in his testimony.

The Landlord's agent CS testified that on August 29, 2011, she saw Kelly smoking something out of a bong or pipe with one of the banned people in the kitchen of the

rental unit, through an open balcony door. A copy of an Incident Report was provided in evidence with respect to this allegation.

The Landlord's agent CS testified that there was a "no smoking" clause in the tenancy agreement and that it was a material term of the tenancy agreement. CS testified that on July 5, 2011, a friend of Kelly's was seen smoking in the hallway at the rental property. A warning letter was issued on July 11, 2011, a copy of which was provided in evidence.

The Landlord's agent SA testified that Kelly has been observed on video surveillance cameras placing objects in the door locks to stop them from locking. She stated that this damaged the locks, which were replaced on June 1, 2011. SA testified that since the locks were replaced, half of them are now broken because Kelly keeps jamming them. SA testified that she has also caught Kelly "in the act".

The Landlord's agent TS testified that the banned people were known drug dealers and that they have threatened the Landlord's agent CA. He stated that the Landlord has a duty to its employees and to the other tenants in the building to provide them a safe place to live.

The Tenant and his advocate gave the following affirmed testimony:

The Tenant's advocate agreed that Kelly lives at the rental unit, but stated that the Landlord's agent TS told the Tenant that she would be given a chance to stay there. She stated that Kelly has a "history" and that some landlords choose not to give her a chance because of her past. The Tenant's advocate stated that the Tenant and Kelly deny all accusations contained in the July 5th letter.

The Tenant testified that that Kelly is allergic to smoke. He stated the Landlord's agent could not have seen Kelly and another person smoking a pipe or bong in his kitchen because he lives on the 2nd floor and the agent would have to have "the neck of a giraffe" to see in the window. The Tenant testified that the edge of the yard at the back of the rental property was approximately 30 yards from the building.

The Tenant testified that he is in bed most of the time but that no one was smoking in the rental unit on August 29, 2011.

When questioned why Kelly was not present to give testimony, the Tenant replied that she was on methadone and had to go to see her doctor today.

The Landlord's agent TS gave the following reply:

The Landlord's agent TS testified that he initially discovered that Kelly was living in the rental unit without the Landlord's permission early on in the tenancy and that the Tenant had begged him to allow her to stay. TS testified that he told the Tenant she could stay

as long as there were no rules broken, but that numerous rules had been broken since then.

The Landlord's agent TS requested an Order of Possession.

Analysis

When a Tenant seeks to cancel a Notice to End Tenancy, the onus is on the Landlord to provide sufficient evidence, on the balance of probabilities, that the tenancy should end for the reasons contained in the Notice.

The Notice indicates the following reasons for ending the tenancy:

The Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
- put the Landlord's property at significant risk.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenancy agreement includes a clause that no person, other than those listed in paragraph 2 above, may occupy the rental unit. It also provides that a tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such person to become an approved occupant. The tenancy agreement further states that failure to apply and obtain the necessary approval of the landlord in writing is a breach of a material term of the tenancy agreement, giving the landlord the right to end the tenancy after proper notice.

There is no written approval of the Landlord that Kelly can remain in the rental unit. The Landlord provided the Tenant with written notice with respect to his breach of this clause of the tenancy agreement on July 5, 2011. The Tenant did not correct the breach and I find that he did breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Kelly did not attend to give verbal testimony, nor did the Tenant provide any documentary evidence (for example a doctor's note indicating that Kelly is allergic to smoke; or a written statement by Kelly refuting the Landlord's documentary evidence). Based on the testimony of the Landlord's agents, I am satisfied that Kelly did allow unauthorized people into the rental property and that those unauthorized people pose a

threat to other tenants and to the Landlord's agent CA. On July 5, 2011, the Tenant was warned about Kelly's behavior and told to stop allowing these people into the building and stop allowing guests to smoke in the rental property. I find that Kelly (a person permitted on the property by the Tenant) did not stop and that Kelly has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord's agent CA on several occasions as outlined in the warning letters and the Incident Report.

For the reasons outlined above, I dismiss the Tenants' application to cancel the Notice to End Tenancy.

Section 55(1) of the Act 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.

I have found that the Tenant received the 1 Month Notice to End Tenancy on August 30, 2011. I find that the effective date of the end of the tenancy was September 30, 2011 and that therefore the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

Conclusion

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

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant.** 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: October 26, 2011.

Residential Tenancy Branch

