



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for an order of possession for unpaid rent, a monetary order for unpaid rent, money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenant is to cancel a notice to end tenancy for cause and to cancel a notice to end tenancy for unpaid rent. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began June 1, 1999 and rent is subsidized under BC Housing guidelines, the tenant paid a security deposit of \$350.00.

On October 5, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

- The tenant has allowed an unreasonable number of occupants in the unit/site;
- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- The tenant has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On October 5, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Order of Possession For Unpaid Rent

The landlord testified that the notice to end tenancy for unpaid rent was served on the tenant after it was determined that the tenant had her adult son and or ex-husband residing with her in the rental unit. The landlord contacted the tenant in writing on September 12, 2011 regarding the allegation however the tenant did not respond back to the landlord. The landlord then determined that the tenant no longer qualified for subsidized housing and issued the notice to end tenancy for unpaid rent as the tenant was then responsible for the full amount of the market rate rent. The landlord stated that they had the tenant's November rent cheque from the ministry but that it had not been cashed as they did not want to continue the tenancy. The landlord in this application is seeking a monetary order for \$1170.00 in unpaid rent.

The landlord stated that they had not directly verified the allegation of additional occupants in the rental unit and based the allegation of additional occupants on statements made by other tenants in the complex. The landlord stated that the ex-husband has been coming to the property on and off for the past year which results in the police having to attend as the tenant has a restraining order against her ex-husband.

The tenant testified that she had not responded to the landlord's letter regarding additional occupants as she had been ill and the respond to by date had 'slipped her mind'. The tenant stated that she and her son are not on speaking terms at this time and because of this she could not get a copy of his tenancy agreement for the landlord. The tenant stated that she had submitted a letter into evidence from her ex-husband's mother verifying that her ex-husband was living with his mother in Nanaimo, BC.

The tenant stated that her son used to live in the complex with his girlfriend but that they both now live off site. The tenant said that her son has friends in the complex that he comes to visit and that is something that is out of the tenant's control. The tenant stated that her ex-husband does not come to her rental unit as she has a restraining order against him and he will be arrested and sent back to jail if he violates the order.

The landlord's witness AA testified that the tenant's ex-husband had been staying with the tenant during the summer and that she had seen him as recently as this past Sunday when he was driving through the complex. AA stated that the ex-husband had gone to rehab, been at the tenants and then felt for rehab again and that she believed he was living with the tenant in August 2011. The tenant responded by stating that her ex-husband has been living with his mother in Nanaimo, BC. The tenant also commented that her ex-husband has no driver's license and that his mother had come by the tenants on Sunday to drop off flea treatment for the tenant's cat.

The landlord's witness KP testified that she would see the tenant's son 'off and on' at the tenant's when he was fighting with his girlfriend whom he lived with in unit 15. KP then stated that the tenant's son was living with the tenant all summer and was there

every single day until October 3, 2011. The tenant responded by stating that her son did not live with her but either stayed with his friends in unit 4 or lived with his girlfriend in unit 15 until they were evicted on August 31, 2011.

The tenant's witness CF testified that the tenant's son had not been living with the tenant and only went to the tenant's when he was fighting with his girlfriend. CF also stated that the tenant's ex-husband had not been to the property since last year as there is a restraining order against him.

Order of Possession For Cause

The landlord stated that they are having serious problems at the complex due to drug and alcohol abuse by various tenants. The landlord stated that many of the tenants in the complex are very afraid and that tenants who have spoken out in the past have had the tires on their vehicles slashed.

The landlord stated that there was an incident involving the tenant's son that took place September 5, 2011 and that the landlord had sent the tenant a warning letter regarding 'excessive noise disturbing other tenants' on September 5, 2011. This incident alleges that the tenant's son and his guests were drinking and fighting and that the tenant's son assaulted someone.

The tenant responded by stating that at the time of the September 5, 2011 incident her son was living with his girlfriend in unit 15. The tenant commented that she had no control over her son and was not responsible for him when he was not residing with her.

The landlord stated that there was then a second incident involving the tenant's son that took place October 2, 2011. During this incident the tenant's son was seen in the tenant's back yard with his friends partying, drinking and smoking marijuana.

The landlord's witness KP who lives next door to the tenant witnessed the October 2, 2011 incident and stated that there were 6 teenagers in the tenant's back yard that were very loud, drinking, smoking marijuana, cursing and discussing how they had badly beaten someone. KP stated that she yelled at the teenagers to leave and that they then went into the tenant's rental unit and started playing very loud music. KP stated that these teenagers also congregate at units 4, and 15 or the back path of the complex, partying, drinking and smoking marijuana.

The tenant acknowledged that her son had been in the back yard without her consent and that she had told them to leave as she does not allow her son's friends in her house. The tenant stated she may have had her television up too loud but that she does even not own a stereo so had no idea as to what loud music KP was referring to. The tenant stated that the back yards in the complex are all connected and accessible by unsecured gates.

The landlord concluded the hearing by stating that she believed that the tenant's ex-husband and son may be gone at this time but that they will be back. The landlord referred to the fact that the tenant did not respond to the September 12, 2011 letter from the landlord and provide proof that her ex-husband and son lived elsewhere. The landlord also spoke to the on-going problems at the complex and the concerns the other tenants have for their safety.

The tenant concluded the hearing by stating that neither her ex-husband or son live with her nor have they been living with her and that the only time her son comes to the complex is to visit his friends as she and her son are not on speaking terms.

Analysis

Order of Possession For Unpaid Rent

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to have the landlord's notice to end tenancy for unpaid rent and monetary order for unpaid rent set aside.

It is recognized that the tenant did not respond to the landlord's letter of September 12, 2011 regarding additional occupants in the rental unit and that until this hearing the tenant had not provided evidence that established where her ex-husband or son resided. However without more substantial evidence from the landlord confirming that the tenant did have additional occupants in the rental unit for periods of more than 3 weeks and with the contradicting testimony of the landlord's witness's where it was stated that the tenant's son was there 'off and on' and 'all summer long', I find that the landlord has not proven its case against the tenant.

Order of Possession For Cause

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to have the landlord's notice to end tenancy for cause.

It is understood that that tenant's son has been and continues to be a serious problem at the property, however as it was not proven that the son in fact resides with the tenant, the tenant cannot be held responsible for his behavior. Consideration must also be given to the fact that the tenant's son was residing in a completely separate rental unit on the property, was evicted and no longer resides on the property but still comes to the property to visit his friends. I find that the landlord has not proven its case against the tenant.

Based on the above facts I find that the landlord has not met the burden of proving that they are entitled to an order of possession for unpaid rent, a monetary order for unpaid

rent or an order of possession for cause and the landlord's application is hereby dismissed without leave to reapply.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy for unpaid rent and notice to end tenancy for cause dated October 5, 2011.

However the tenant needs to understand that while the landlord was not successful in obtaining an order of possession in this hearing, that if the tenant allows additional occupants in the rental unit and if any of those occupants create problems on the property in the future, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

Conclusion

The landlord's application is dismissed without leave to reapply.

The landlord's Notice to End Tenancy for Unpaid Rent and Notice to End Tenancy for Cause dated October 5, 2011 are hereby set aside with the result that the tenancy continues uninterrupted.

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: November 14, 2011.

Residential Tenancy Branch