

DECISION

Dispute Codes CNC

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for cause.

Both parties attended the hearing by conference call and gave testimony. The Tenant has submitted a copy of the 1 month notice to end tenancy issued for cause and a 1 page addendum to their details of dispute. The Landlord has confirmed receipt of the Tenant's notice of hearing and evidence package. The Landlord states that the Tenants were sent an evidence package consisting of 6 emails reporting complaints about the Tenants that were edited to remove any information about the sources. The Landlord states that this package (unedited) was sent by Canada Post Registered Mail to the Residential Tenancy Branch and that it was refused. The Landlord is unable to provide any information for the Canada Post Registered Mail refusal or the Customer Tracking Information. As the Tenant has confirmed receipt of the edited evidence, the Landlord has read into the hearing orally the contents of the emails. As such, I find that both parties have been properly served with the notice of a hearing and evidence for this hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy issued for cause?

Background, Evidence and Analysis

Both parties have confirmed that the Landlord served a 1 month notice to end tenancy for cause dated May 31, 2012 on the Tenant on same date. The Landlord has stated the following reasons for cause.

- 1) Tenant has allowed an unreasonable number of occupants in the unit/site.
- 2) 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.
 - Put the landlord's property at significant risk.
- 3) Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord has stated in his direct testimony that the Tenants routinely prop open a side door, which constitutes an illegal activity by jeopardizing the safety and security of the other Tenants. The Tenants dispute this stating that they have never left the door propped open. The Landlord relies on the email complaints from the other Tenants, but states that they have not investigated any of these issues. The Landlord states that many of the other Tenants have provided concerns of illegal drug activity and that a complaint has been filed with the local police. The Landlord has indicated that no criminal charges have been made regarding this Tenancy. The Landlord states that Tenants have reported "suspected drug dealing" and that the Tenants have received "Hells Angels" visitors to their unit. The Tenants dispute this stating that they are not drug dealing and that the Tenant living above them is a known "Hells Angels" member. The Tenant states that there has been some known drug dealing problems in the building that have nothing to do with them.

As explained to the parties during the hearing the onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as they have served the Tenant with the 1 month notice to end tenancy for cause which is being disputed by the Tenants. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. On this basis, I find that the Landlord has failed to provide sufficient evidence to support their claim for their reasons for cause. The Tenant's application to cancel a notice to end tenancy for cause dated May 31, 2012 is granted. The notice is set aside and the Tenancy shall continue.

Conclusion

The Tenant's application is granted.

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 26, 2012.

Residential Tenancy Branch