



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC / OPC

Introduction

This hearing concerns the tenant's application for cancellation of a 1 month notice to end tenancy for cause. Both parties participated in the hearing and gave affirmed testimony.

During the hearing the landlord requested an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began in late 2010.

The landlord issued a 1 month notice to end tenancy for cause dated June 29, 2012, a copy of which was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is July 29, 2012. Reasons shown on the notice for its issuance are as follows:

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- put the landlord's property at significant risk

Tenant has not done required repairs of damage to the unit/site

The tenant filed an application to dispute the notice on July 6, 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(iii) put the landlord's property at significant risk;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3) [*obligations to repair and maintain*], within a reasonable time;

I find that the tenant's application to dispute the notice was filed (July 6, 2012) within the 10 day period available for doing same after service of the notice (June 29, 2012).

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In his application the tenant claims that the unit door was damaged, two windows were broken and he was assaulted in relation to an incident involving police being called to the unit on June 10, 2012. The landlord testified that it was police who inflicted the property damage during their efforts to access the unit in order to apprehend a third party. The tenant stated that the third party is an "acquaintance." In his application the

tenant indicated that he is still awaiting the “results of crime youth assistance program application.” There was no documentary evidence submitted by the landlord.

Having considered the testimony of the parties, in addition to the very limited documentary evidence, I find on a balance of probabilities that there is insufficient evidence of grounds to end the tenancy. Specifically, it is not unequivocally clear whether the third party was invited into the unit by the tenant or whether he otherwise gained access. Further, the sequence of events related to communication around necessary repairs and / or timelines which may or may not have been agreed to in regard to completion of them is unclear. As well, I consider it relevant that the tenant may be a victim of crime, and there is insufficient evidence that he intentionally facilitated creation of the circumstances giving rise to issuance of the notice. Accordingly, the notice to end tenancy is hereby set aside, with the result that the tenancy presently continues uninterrupted.

Conclusion

The notice to end tenancy is hereby set aside. The tenancy continues in full force and effect.

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 25, 2012.

Residential Tenancy Branch