

DECISION

Dispute Codes MT, CNC, OPT

Introduction

This is an application filed by the Tenant to be allowed more time to make an application, to cancel a notice to end tenancy issued for cause and to obtain an order of possession.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the submitted evidence, I am satisfied that both parties have been properly served with the notice of hearing and evidence submitted.

At the beginning of the hearing it was clarified with both parties that the Tenants still occupy the rental unit and do not require an order of possession. As such, the Tenant has withdrawn this portion of the application and no further action is required.

The Tenant has made an application for more time to be allowed to make an application to cancel the notice because she states that at the time the notice was served, the Tenant, C.B. was in hospital with pneumonia for approximately 3 weeks. The Tenants state that they were unable to file for dispute because of this. The Landlord has made no comment on this request. I find the Tenant's request for more time to be reasonable in the circumstances and in light that the Landlord is not challenging the reason for the delay. The Tenant's application for more time is granted. The hearing shall proceed.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the 1 month notice to end tenancy issued for cause?

Background and Evidence

Both parties agreed that the Tenant was served the 1 month notice to end tenancy issued for cause on September 28, 2012. Both parties agreed that the reasons for cause were for noise complaints, threats against another Tenant and the leaving of a mattress in the hallway and the use of shopping carts in and out of the rental building.

The Landlord states that he never gave any warnings or notices prior to the notice to end tenancy for cause being issued. The Landlord stated that he ignored the first noise complaint but issued the notice to end tenancy after receiving multiple complaints. The Tenants dispute the Landlord's claims. The Landlord's witness, L.A. has stated in her direct testimony as well as a handwritten statement that there were 3 occasions (July 25, 2012, August 29, 2012 and September 21, 2012) when the Tenants were making excessive noise and disturbing her all during the early morning hours. The witness also states that she feared for her safety as the Tenants made threats of violence against her. The Landlord states that he had to take action after receiving 5 complaints. The Tenants disputes that any threats were made against the witness. The Tenants stated that they were never given any warnings of the complaints until they received the Landlord's notice of eviction. Both parties agreed that the witness, L.A. is no longer a Tenant of the building. The Tenant claims that the witness was evicted after failing to pay rent. The witness disputes this stating that she could no longer tolerate living in the same building as the Tenants.

Analysis

I find that the Tenants were properly served with the 1 month notice to end tenancy issued for cause on September 28, 2012 as dated. The Landlord has made claims that the Tenants have violated the right of quiet enjoyment by other Tenants. The Tenants have disputed these claims.

I find on a balance of probabilities that the Landlord has established his claim of cause. 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. I prefer the evidence of the Landlord and his witness over that of the Tenants. The Tenant's application to cancel the notice is dismissed without leave to reapply. As the Landlord has indicated through out the hearing that he wished for the Tenancy to come to an end, the Landlord is entitled to an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the notice to end tenancy is dismissed.
The Landlord is granted an order of possession.

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 27, 2012.

Residential Tenancy Branch