



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

The tenant submitted evidence to the Residential Tenancy Branch which she did not serve on the landlord. The tenant testified that she was not aware that she was supposed to give the landlord a copy of her evidence.

When she filed her application for dispute resolution, the tenant was given a fact sheet entitled "The Dispute Resolution Process" which clearly explains the requirements for serving evidence. I find that the tenant should have known that it was her responsibility to serve the landlord with a copy of her evidence and I advised the tenant at the hearing that I would not consider that evidence as the landlord had not had an opportunity to review it.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that on December 29, 2012, the tenant was served with a one month notice to end tenancy for cause (the "Notice"). The Notice alleges that 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 has put the landlord's property at significant risk.

The landlord testified that the Notice was served because of events which occurred in the early morning of December 29. The landlord's agent, M.G., testified that he was awakened by a telephone call from another resident, advising that there was a disturbance in the courtyard of the residential property. M.G. went to the court yard

where he observed a group of young people who were going in and out of the rental unit. M.G. observed the police speaking with another resident, A.W., and then observed the police handcuffing the tenant's son. Shortly thereafter, tenant emerged from the rental unit, spoke with the police, and the police removed the handcuffs from the tenant's son.

M.G. testified that he learned from A.W. and from other residents in the area that the tenant's son and his guests had pounded on the window of A.W.'s unit, eventually breaking it.

The landlord submitted a statement from A.W. in which he stated that the tenant's son and his guests pounded on his window at approximately 1:00 a.m., again at 3:30 a.m. and again at 4:30 a.m., at which time they broke the window. A.W. stated that after the window broke, he ran into his bathroom and called for help through the vent, asking that someone telephone the police. He further stated that shortly after this, the tenant's son came to the door and pretended to be the RCMP, asking him to open the door. A.W. was able to identify that it was the son and not the RCMP by looking through the peephole. A.W. stated that he is now afraid to return home and has been living elsewhere with his parents.

The tenant insisted that her son was not involved in this altercation and stated that she is sure that A.W. is not living elsewhere. The tenant claimed that A.W. has caused a multitude of problems over the last several months and that the landlord has not responded to her complaints.

The landlord also submitted statements from other occupants who stated that they saw and heard people associated with the tenant's rental unit being verbally abusive.

The parties agreed that before the police arrived, someone had sprayed catsup and mustard over the exterior of A.W.'s unit. The tenant testified that she did not know who was responsible for this.

Analysis

Having reviewed the testimony and the evidence, I find it more likely than not that the tenant's son and his guests were responsible for breaking A.W.'s window and vandalizing the exterior of his unit in the early morning of December 29. I have arrived at this conclusion because by the tenant's own testimony, she was asleep during these events and she did not produce her son to testify whether he was involved. Because the tenant was asleep, she had no firsthand knowledge of what her son and his guests were doing.

Although the tenant offered hearsay evidence that her son had said he was nowhere near the rental unit when the window was broken, I do not find this evidence to be persuasive or have a ring of truth. I find no reason to disbelieve the testimony of M.G. or the written statement of A.W. or other occupants.

I find that the tenant's son and his guests, all of whom were allowed onto the residential property by the tenant, have significantly interfered with and unreasonably disturbed A.W. and have seriously jeopardized his safety. I find that the landlord has established grounds to end this tenancy and I therefore dismiss the tenant's application to set aside the Notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. 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.

As this decision is issued just 2 days before the effective date of the Notice, I find it appropriate to set the end of tenancy date at February 8, 2013. The tenant will be responsible to pay pro-rated rent for February 1-8 and the parties should deal with the security deposit in accordance with the provisions of the Act.

Conclusion

The claim is dismissed and 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: January 29, 2013

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca