



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT and CNC

Introduction

This hearing was convened on the tenants' application of January 15, 2013 seeking more time to make this application and to have set aside a Notice to End Tenancy for cause served by posting on the tenant's door on December 28, 2012 and in person on January 14, 2013.

Section 47(4) of the *Act* permits tenants 10 days from receipt of a Notice to End Tenancy for cause to make application to contest the notice, a time limit that is restated on the notice. In the present matter, notice served by posting is deemed to have been received three days later which would have permitted the tenant until January 11, 2013 to make application.

Section 66 of the *Act* states that the director's delegate may only extend a time limit only in exceptional circumstances. As the tenant submitted documentary evidence that he had been in hospital from December 27, 2012 to January 11, 2013, and as the landlord did not object to the time extension, the hearing proceeded on the merits.

Issue(s) to be Decided

Should the Notice to End Tenancy of December 28, 2012 be set aside or upheld?

Background and Evidence

This tenancy began in November of 2009 and rent is currently \$610 per month.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served following an incident on December 27, 2013 between the subject tenant and another tenant which resulted in attendance by the police emergency response team. The 14th floor of the building had to be evacuated and two and one-half hours passed before police were able to access the tenant. The incident was verified by photographic evidence.

The subject tenant was taken to hospital where he was treated for an illness related psychosis until January 11, 2013.

The landlord stated that notices to end the tenancies for cause had been given to both tenants, and the other tenant has since left on a subsequent notice for unpaid rent.

The cause cited on the subject notice was that the tenant had “seriously jeopardized the health or safety or lawful right, safety or physical well-being of another occupant or the landlord.”

The landlord gave uncontested evidence that the tenant had caused substantial damage to the inside of the door to the rental unit which the tenant said he had done while he was in an agitated state. The tenant also acknowledged that he had written “a social comment” on the outside of the door in late January 2012. Therefore were two other pictures of graffiti directed toward the tenant but the parties concurred they had been done by others.

When I asked if there had been other incidents similar to that in question, the building manager stated he had only been in his position for a short time and was not aware of any. However, the tenant stated that he had been taken from the rental unit by police and taken to the hospital in August of 2012.

Analysis

Section 47(1)(d)(ii) of the *Act* provides that a landlord may issue a one-month Notice to End Tenancy for cause in circumstances in which the tenant or the tenant’s guest has, “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.”

While I accept the evidence of the tenant that his conduct was related to illness, I must find, nevertheless, that it did seriously impact the safety and lawful rights of others.

Therefore, I found that the Notice to End Tenancy was lawful and valid and declined to set it aside.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's request when an application to set aside a notice to end tenancy is dismissed.

I find that the landlord is entitled to the Order of Possession to take effect at 1 p.m. on February 28, 2012 as requested by the landlord.

I must commend both parties for their courteous, considerate and reasoned conduct during the hearing. The tenant readily acknowledged matters in which he had a hand, and the landlord demonstrated consideration of the tenant on postponing the effective date of the Order of Possession to February 28, 2013.

Conclusion

The tenants' application is dismissed on its merits without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on March 31, 2013.

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: February 08, 2013

Residential Tenancy Branch

