



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B.C. Ltd 0937715
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenants application to cancel a Notice to End Tenancy for cause; other issues and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlords agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to have the Notice to End Tenancy cancelled?

Background and Evidence

The parties agree that this tenancy started on February 19, 2013, for a fixed term ending in February, 2014. Rent for this unit is \$900.00 and is due on the 1st day of each month.

The landlord's agents testify that the tenants were served with a One Month Notice to End Tenancy for cause. This Notice was served by the property manager by posting it to the tenants' door on February 19, 2013. The notice has an effective date of March 31, 2013 and provided the following reasons to end the tenancy:

- 1) 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,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk;
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (i) Damaged the landlords' property
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) Jeopardized a lawful right or interest of another occupant or the landlord

The landlord's agents testify that the tenants lied on their application for the tenancy. The landlord's agent testifies that the tenant told the manager that they were self employed and operated a delivery service and they had to move out of their previous unit due to mould issues. The landlord's agent testifies that this is not the case and the tenants' previous rental unit was the subject of a drug related shooting.

The landlords agent testifies that they spoke to the police and were informed that these tenants were residents at that property where the shooting occurred. The landlord's agent testifies that the manager has now disappeared and they think the manager is afraid to testify at the hearing. The manager cannot be located.

The landlord's agents testify that within days of the tenants moving into the complex someone told the landlord's agent that the tenants were crack dealers. The landlord's agent testifies that although they have no direct knowledge of events happening at the tenants unit they have been informed by the manager of these events. The landlord's agents testify that their manager informed them that there are substantial drug fumes coming from the tenants unit and getting into other tenants units. The landlord's agents testify that Crack is a dangerous substance and is or is likely to cause damage to the tenants unit and it is an illegal activity. The landlord's agents testify that they were informed that there are many people coming and going at the tenants unit. People are being dropped off by cab and some stay a few minutes while others stay for longer periods of time. The cabs wait outside the tenants unit while these people consume drugs. The landlord's agents testify that they have been informed that there is a lot of hollering and violence in the tenants unit and the landlord's agents are concerned that there may be another shooting. The landlord's agents testify that they have had complaints from other tenants and the landlord's agents are worried about all these events as there are young children living in the complex.

The landlord's agent requests that the Notice to End Tenancy is upheld and they seek an Order of Possession effective on March 31, 2013.

The tenant LH disputes the landlord's agent's claims. The tenant testifies that they are not drug dealers and do not use drugs. The tenant testifies that the only times the police have been called was when the tenants called the police because the manager pushed her way into the tenants unit when the manager was drunk and started to push the tenant. The tenant testifies that they pushed the manager out of their unit and called the police. The police were called again when the manager started to swear at the tenant's niece as the tenant and her niece were getting out of a cab. The tenant testifies that the manager was drunk again at this time and was trying to call the tenant down. The police were called again and the manager was told to stop doing this to the tenant.

The tenant disputes that they told the manager that they had their own business. The tenant testifies that her husband, the other tenant, did have a delivery business before but at the time of renting they are both on welfare. The tenant testifies that they have friends and family visit them at the unit and the landlord cannot say these people are buying drugs

The landlord's agent cross examines the tenant LH and asks the tenant if the tenant denies that they lived on the street where the shooting took place. The tenant responds and states they did live there and the person who was shot did stay with the tenant for a while until the tenant kicked him out. The tenant agrees that this happened on the outside of their rental unit but is not connected to the present tenancy. The landlord's agent asks the tenant if the tenant or anyone else in the house is using drugs. The tenant responds that no one is using drugs. The tenant testifies that she is going to get some prescription drugs from the doctor for the tenant's medical condition. The landlord's agent asks the tenant if the tenants or anyone in the unit dealing drugs. The tenant responds no they are not dealing drugs and no one else is dealing drugs from their unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord' agents agree that the information they have has come from the manager however the manger has disappeared and could not be located to attend the hearing to give evidence under oath. The landlord's agents testify that they have received complaints from other tenants about drug fumes; noise; and violence however no

complaint letters have been provided in evidence and no witnesses were asked to attend this hearing to give testimony under oath. The landlord's agents testify that the tenants lied on the application for tenancy, however no copy of the application has been provided in evidence. The landlord's agents testify that they were warned that the tenants were drug dealers by a third party but again have provided no evidence to support this claim. The landlord's agents have claimed the police were called out and had also informed the landlord's agents that the tenants came from a previous unit where there was a drug related shooting, however no evidence has been provided to show any police reports or that the tenant was directly or indirectly involved in a shooting at a previous unit, that it was drug related or how that impacts on this tenancy. The tenant agrees that someone was shot at her previous unit but states it has nothing to do with their tenancy now.

Consequently, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I do however caution the tenants that any further concerns of the landlord may result in another One Month Notice to End Tenancy for cause being issued to the tenants.

Conclusion

The tenants' application is allowed. The one Month Notice to End Tenancy for Cause dated February 19, 2013 is cancelled and the tenancy will continue. As the tenants have been successful with their application the tenants are entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: March 27, 2013

Residential Tenancy Branch

