



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard.

At the outset of the hearing, the female tenant requested an adjournment to a face-to-face hearing and claimed that they required this hearing to be held in person because the male tenant had a hearing impairment. The female tenant stated that she was the only participant in the hearing, for the tenant. However, during the hearing the male tenant started speaking and it was apparent that the male tenant was present throughout the hearing. He was put under oath and he actively participated in the remainder of the hearing.

The tenants acknowledged that there had been police involvement as described in the body of this decision and claimed that their constitutional right to remain silent was infringed by having been brought before this tribunal.

The tenants further claimed that section 58(2)(c) of the *Residential Tenancy Act* (the "Act") prevented this matter from being heard in this forum. Section 58(2)(c) provides as follows: If the director receives an application for dispute resolution in relation to a dispute with the person's landlord or tenant, the director must determine the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

The parties were in agreement that arrests had been made. However, even if charges have been laid against the tenants, I find that although the charges will have resulted from many of the same facts, the criminal trial would address proof on a criminal standard and determination of criminal guilt whereas the issue before me addresses solely the question of whether the tenancy should end. I therefore found that the dispute is not substantially linked to a matter before the Supreme Court.

As for the tenants' constitutional argument, section 78.1 of the Act references section 44 of the *Administrative Tribunals Act* which provides that this tribunal does not have jurisdiction over constitutional questions. I found that the constitutional argument must therefore be brought in a different forum.

At the hearing, the tenants provided their testimony and should that evidence be brought against them in any criminal proceedings resulting from these events, the tenants are free to argue for the exclusion of that evidence at that time and in that forum. I found that the mere possibility that the Crown may attempt to use this testimony against them does not bar the landlord from proceeding against them civilly, nor does their right to remain silent extend to these proceedings.

For the above reasons, the hearing proceeded on the appointed date despite the tenants' objections.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on June 01, 2010. The monthly rent is \$540.00 payable on the first of each month. The rent does not include parking. The rental unit is located in a building complex that houses other tenants and is situated in a cul-de-sac.

The landlord testified that the tenant has a steady stream of visitors who drive by or walk up to the rental unit, visit for a few minutes and drive off or walk away, which is an activity that is consistent with drug dealing. The landlord stated that the tenants behave in an aggressive manner towards other occupants of the complex which makes the other occupants fear for their safety.

The landlord stated that the other occupants are too scared to write complaints and she had advised them to contact the police, if they needed to. As a result of these complaints the police conducted surveillance and gathered enough information to obtain a search warrant and conduct a search of the premises. On February 01, 2013, the police searched the rental unit and seized drugs and illegal weapons. Two persons including the male tenant were arrested.

The tenant stated that the police seized medication and household items. The tenant testified that none of the items that were seized were illegal to have in her possession.

Later during the hearing the tenant agreed that she had in her possession, a stun gun, bear spray and medical marijuana. The tenant stated that the stun gun belonged to her grandmother and that she was unaware that it was illegal to have in her possession. The tenant stated that bear spray and medical marijuana are not illegal.

On May 28, 2013, the landlord served the tenant with a notice to end tenancy for cause. The notice was served for the following reasons;

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

- a. significantly interfered with or unreasonably disturbed another occupant or the landlord
- b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- c. put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- a. adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- b. jeopardize a lawful right or interest of another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

A constable who participated in the search of the rental unit on February 01, 2013, testified for the landlord. He stated that because this matter was waiting to be heard in Supreme Court, he had consulted legal counsel and was able to provide limited details.

The constable stated that the rental unit was searched after a police investigation yielded information that warranted a search. The constable stated that the items seized from the rental unit were listed as illegal substances in the schedule of controlled drugs and substances Act. He further added that at least one item seized from the rental unit was defined as a weapon within the criminal code. Two persons were arrested.

The tenant argued that the arrests were made for crimes that were not carried out on the rental property and the items seized can also be regarded as legal under certain special circumstances.

An occupant of the complex also testified for the landlord. She stated that the tenant has multiple visitors who stop by for a few minutes. She also described an incident that involved an assault of another occupant by the tenant.

The witness stated that the tenant has threatened her verbally and glares at her and her children. She stated that she feels scared for her safety and that of her family.

The tenant stated that she may have said nasty things to the witness but she did not threaten her. The tenant also argued that the multiple visits are from family members. She has a large family and her grand children stop by for short periods of time to take or repay loans made to them by the tenant. The tenant also denied having assaulted another occupant.

Analysis:

In order to support the notice to end tenancy, the landlord must prove at least one of the reasons for the notice to end tenancy.

Section 47 of the *Residential Tenancy Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The constable testified that illegal substances and weapons were seized from the rental unit. The landlord and her witness testified that the occupants of the complex fear for their safety due to the aggressive and sometimes violent behavior of the tenant. In this case, the other occupants of the residential property consist of families with children. I find that living in fear for their safety, adversely affects the quiet enjoyment of these residents.

I further find that by her own admission, the tenant had in her possession at least one illegal weapon.

Based on the documentary evidence and the verbal testimony of both parties and the witnesses, I find that on a balance of probabilities, the tenant is involved in activity that is consistent with illegal activity and therefore I find that I must uphold the notice to end tenancy.

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(1), 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.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant.

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: June 27, 2013

Residential Tenancy Branch

