



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The tenants apply to challenge and cancel a one month Notice to End Tenancy served May 28, 2013.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the tenants' conduct has justified the Notice?

Background and Evidence

The rental unit is a one bedroom apartment in a condominium apartment building. The tenancy started in mid-February 2013 for a fixed term to the end of February 2014. The rent is \$650.00 per month and the landlord holds a \$325.00 security deposit.

The evidence presented by the landlord's representative at the hearing centres around the claim that the tenants are dealing drugs from the apartment. While there was mention of the smell of cigarette smoke in the unit, that was not the basis for giving the one month Notice.

In support of its contention, the landlord's agent refers to verbal complaints received from two of the building's occupants prior to the Notice, to the effect that the tenants were "dealing" because there were frequent visitors to the apartment, day and night and for very short visits, and that, on April 30th, someone was seen "smoking crack" on the tenants' patio.

The landlord also received a notice of complaints forwarded to it by the strata manager. It requested statements and the strata manager provided it with the statements of three tenants as well as the email statement of a fourth.

The statement of R.B. says he lives above the tenants' unit has "witnessed, smelled and watched" the high traffic drug use. He states he sees four regular cars per day and about four or five random cars coming and going. The cars park in spots 119 or 120 and either run in or the tenants go to the window to drop off or pick up drugs.

The statement of Ms. C.L., the strata council president, is to effect that she'd heard from other tenants about drug dealing from the apartment in question and went and watched cars going "in and out" as well as people going into the "units" or to the cars. Some of the people appeared to be "crackheads."

Ms. V.T. provided a statement that for several months she has seen people running in and out of the applicant tenants' apartment, most for no longer than five minutes and often repeat visitors. She has seen some who were under the influence of drugs or alcohol. She's called the landlord and the police. She says that either she or her neighbours (it's not clear which) have smelled "crack cocaine."

The landlord submitted an email statement from Ms. J.R., a tenant and member of the strata council to the effect that on May 8th she observed a suspicious couple trying to contact the tenants and, she believes that they were let into the building by applicant tenants. As well, in mid-May, she observed a man apparently drunk or high, go into the applicant tenants' unit and then immediately leave again and exit the building. She suspects it was a drug purchase.

In response, the tenant Ms. G.J. testified that it is all lies. The allegations never happened. She says she does not drink or drug and is a quiet tenant.

Ms. A.A. testified that she is a friend of the tenants' and is at their place almost every day and the tenants don't use drugs. She says they are quiet and go to bed early.

Mr. D.B. denies using or selling drugs. He testified that the people referred to in the landlord's evidence are just people coming to visit and they are not "short staying." He says that he and his co-tenant were formerly street people, that is, homeless, and that they have many friends who are still homeless and who come by. He says the police have been stationed outside their apartment on occasion, but without incident. He says that some of the people who come by are looking for the prior tenants. He points out that on May 8, a day referred to specifically in the landlord's evidence, he and Ms. G.J. were in Alberta and their apartment was empty. He says that he and Ms. G.J. have nothing; no money or significant belongings. It would be otherwise if they were selling drugs. They are on disability income and are not making money selling drugs.

Analysis

The ending of a tenancy is a very serious matter. The burden of proving that a tenant or tenants have conducted themselves in a manner justifying eviction, is a burden that initially falls on the landlord alleging that conduct. The landlord must present cogent evidence that demonstrates on a balance of probabilities that the alleged conduct has likely occurred.

The evidence should be clear and convincing, not open to conjecture or speculation. The opinions and conclusions of non-experts are of little if any value. First hand evidence is best in such a serious matter. Though signed statements are admissible evidence under our residential tenancy rules, their authors are not present to clarify ambiguities, provide needed details or stand to a challenge by a tenant.

At the same time, if it is shown that a tenant is dealing drugs from an apartment, an arbitrator will not hesitate to evict that tenant. Not only is such conduct illegal and a ground for eviction on its own, the conduct attracts persons of the most unsavoury character, frequently people forced to petty crime and worse to support their addiction.

In this case, the evidence presented by the landlord shows that the tenants might be selling drugs from their apartment. The fact of frequent, transitory visitors at odd hours is, on its own, good grounds for speculating that some illicit conduct is occurring.

At the same time, the landlord's evidence, three signed statements and an email, does not provide much needed detail. In all that evidence only one actual date is offered for the applicant tenants to make specific answer to and on that date the activity of the two people being observed only gave rise to a guess that the applicant tenants let them in the side door. The most powerful evidence is that found in the statement of R.B., who says four regular cars come every day as well as four or five random cars. They park in one of two stalls and either go in to the tenants or the tenants would go to the window to pick up or drop off. Unfortunately, R.B. did not attend to give evidence and so simple questions cannot be answered, for example, what a "regular" car was or how he makes that determination, how he knows that eight or nine cars come every day with occupants seeking out the tenants, or how he knows that the tenants' suite was the destination or what window he is speaking of; car windows or apartment windows, or whether he, in fact, observed the exchange of money or drugs or really only suspects it happened.

In the face of the tenants' sworn denial of drug activity and Mr. D.B.'s not totally unreasonable explanation that he and Ms. G.J. are being visited by their homeless friends, R.B.'s unsworn, rather general, written statement cannot stand.

In result, on the competing evidence presented at the hearing, while giving cause for concern and perhaps giving good reason for speculation, the tenants' explanation is not unreasonable to explain the rather general particulars in the landlord's evidence. The landlord has not proved on a balance of probabilities, good grounds for its Notice to End Tenancy.

Conclusion

The tenants' application is allowed. The Notice to End Tenancy dated May 28, 2013 is hereby cancelled.

This decision is not a finding that the tenants are not dealing drugs from the rental unit, merely that the landlord has not established it. The landlord is free to issue another Notice to End Tenancy for conduct occurring after the date of this Notice

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: July 08, 2013

Residential Tenancy Branch