



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0955802 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause.

The tenant and an agent for the landlord company attended the conference call hearing and each gave affirmed testimony. No evidence was provided by either party with the exception of a copy of a notice to end tenancy provided by the tenant. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the notice to end tenancy issued by the landlord be cancelled?

Background and Evidence

The landlord's agent was unable to testify as to the beginning date of the tenancy, the amount of rent payable, or whether or not a written tenancy agreement exists, but testified that this month-to-month tenancy began about 14 months ago and the tenant still resides in the rental unit. Rent is payable in advance on the 1st day of each month, and there are no rental arrears.

The landlord's agent further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit, but does not recall the date. When questioned about the copy of a 1 Month Notice to End Tenancy for Cause provided by the tenant, the landlord's agent testified that it is a copy of the one served on the tenant but was originally issued in February and had to be re-written. The notice provided by the hearing is dated March 20, 2014 and contains an expected date of vacancy of April 21, 2014. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
- Tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Rental unit/site must be vacated to comply with a government order;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord's agent testified that the City's Fire/Rescue service issued a notice of violation after an inspection attempt on November 25, 2013 which states that the fire load in the rental unit must be reduced. The fire department couldn't get into the rental unit; too much stuff was barricading the door and they couldn't open it. Another notice of violation was issued on December 20, 2013 which states that the landlord is to ensure that the tenant complies in ensuring access to windows, sprinkler clearance, that the door opens, removing excess combustibles and that no items be stored over 4 feet except on shelves. The landlord has not been able to complete an inspection of the rental unit even after scheduling an inspection. The tenant was not there, and the landlord did not enter the rental unit, and states that the tenant has jeopardized the health or safety of others and put the landlord's property at risk.

The landlord's agent further testified that prior to her employment with the landlord company a doctor from a local health authority described the tenant as a hoarder. The landlord claims that such behaviors constitute illegal activity.

The landlord's agent also believes the accumulation of items in the rental unit will cost the landlord money to return it to a rentable state, and claims that the tenant has caused extraordinary damage to the rental unit.

The landlord's agent also testified that the tenant has not done required repairs of damage to the unit to get it back to where it was at the outset of the tenancy.

With respect to breaching a material term of the tenancy, the landlord's agent testified that the tenant was written to and told numerous times that the rental unit had to be cleaned out.

The landlord's agent further testified that the City's Fire/Rescue service told the landlord's agent that it was in the landlord's best interest to evict the tenant, and the landlord's agent checked off the box on the notice to end tenancy respecting non-compliance with an order.

No evidentiary material has been provided by the landlord.

The tenant testified that the tenancy began 13 or 14 months ago on a month-to-month basis and that rent in the amount of \$470.00 per month is payable on the 1st day of each month.

The tenant also testified that the landlord scheduled an inspection and the tenant was not home, but assumed the landlord entered the rental unit and completed the inspection. The tenant did not know the landlord didn't inspect.

The tenant also testified that a lot of items have been removed from the rental unit. The tenant resided in his boat prior to this tenancy and didn't finish unpacking. There were many boxes but some were small and he threw out some stuff. There is access to the windows, sprinkler clearance, the door to the rental unit opens freely, there are no excess combustibles and no items stored over 4 feet except on shelves.

The tenant further testified that he did not receive any written letters from the landlord or from the fire department, only the notice to end tenancy given by the landlord.

Analysis

Where a tenant disputes a notice to end tenancy, the onus is on the landlord to prove the validity of the notice which can include the reasons for issuing it.

In this case, the landlord was unable to answer any questions about the tenancy and has not been in the rental unit. Further, there is no evidence of hoarding, no evidence of illegal activity, no evidence of damage, no evidence of orders issued by the City, the Fire Department, the Residential Tenancy Branch or any other body. I am not satisfied that the tenant has jeopardized the health or safety of anyone or put the landlord's property at significant risk.

In the circumstances, I find that the landlord has failed to establish that the tenancy should end, and I therefore cancel the notice to end tenancy.

Conclusion

For the reasons set out above, the notice to end tenancy dated March 20, 2014 is hereby cancelled and the tenancy continues.

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: May 21, 2014

Residential Tenancy Branch

