



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 to cancel a notice to end tenancy for cause.

The tenant attended the teleconference hearing and gave affirmed evidence. The rental unit is in a building owned by a strata corporation. The notice to end tenancy was issued by the strata corporation and not the tenant's landlord, as noted below. Both a member of the strata council and an agent for the strata corporation attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The strata council member gave evidence that the tenant was served with a Notice to End Tenancy for Cause (the "Notice") by posting the Notice on the tenant's door on April 27, 2014. Section 90 provides that a document served in this manner is deemed to be received three days later, in this case on April 30, 2014. The Notice gives an effective date, or move-out date, of May 31, 2014. The Notice specifies the following reasons for the Notice:

- 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;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The strata council member gave evidence that over the last 10 months there have been more than 200 thefts reported at the strata complex, most from vehicles and storage lockers in the underground parkade. A mobile water-pump used to prevent flooding in the parkade has also twice been stolen and replaced. The strata corporation hired security guards who reported to the strata corporation that thefts occurred when two individuals, CB and CC, were present on the property.

The strata council member gave evidence that CB and CC lived in unit 201 of building 1 until December 2013. CB and CC then apparently moved in with tenants in unit 204 of building 4. The strata council member gave evidence that all occupants of unit 204 of building 4 were evicted and vacated unit 204 sometime during the month of April 2014.

The strata council member said that CB and CC were “linked” to the tenant in this application. He said that the strata corporation believed there was a connection between CB, CC, and the tenant in this application. Accordingly, the strata corporation approached the landlord of the tenant in this application. The strata council member gave evidence that the tenant’s landlord thought the strata corporation was wrong in its assessment of his tenant. Since the landlord would not act, the strata corporation issued the Notice pursuant to *Strata Property Act* [S.B.C. 1998] c. 43 (the “SPA”) Section 138, which reads:

(1) A repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot that seriously interferes with another person's use and enjoyment of a strata lot, the common property or the common assets is an event that allows the strata corporation to give the tenant a notice terminating the tenancy agreement under section 47 [*landlord's notice: cause*] of the *Residential Tenancy Act*.

The strata council member gave evidence that the site manager informed him on April 25, 2014 that the tenant was providing CB and CC with access to the building for illegal purposes.

The tenant gave evidence that she got to know CC because they both went to a Tim Horton's located beside the strata complex and were both pregnant at the same time. Her evidence is that she permitted CC to enter her rental unit to use her telephone on a few occasions, because CC did not have a telephone. The tenant's evidence is that CB and CC were residing in unit 204 of building 4 in the strata complex at that time, and so she did not have to let them into the building.

The tenant gave evidence that the strata corporation did not make her aware that CB and CC were no longer allowed into the building. There were no concerns raised with the tenant before she received the Notice. The tenant gave evidence that she was not aware that CB and CC were involved with any illegal activities. She said she has not seen CC for some time, and does not know where CB and CC are now.

The tenant also raised a concern that it is the strata corporation and not her landlord who seeks to evict her. Further, she notes that the Notice is addressed to “Jane Doe” and “John Doe” rather than herself.

Analysis

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. Here, the strata corporation has specified three causes for ending the tenancy. If the strata corporation does not prove any of the specified causes, then I must cancel the Notice.

In this case, the strata corporation's concerns about the tenant relate entirely to the purported actions of CB and CC and not to any actions of the tenant herself.

I accept the tenant's evidence that she did not permit CB and CC on the property, since they were residing in the strata complex on the occasions when CC borrowed her telephone. For that reason, it cannot be said that CB and CC were persons permitted on the property by the tenant. The strata corporation has therefore failed to prove that "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" or that "Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk".

The strata corporation did not give evidence to indicate the tenant herself engaged in any illegal activity, except possibly by inference that the tenant knew of and facilitated the purported actions of CB and CC. I accept the tenant's evidence on this point and I find the strata corporation has not proven on balance that the tenant knew of or participated in any illegal activity. For that reason, I find the strata corporation has failed to prove that "Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord." Since the strata corporation has failed to prove any of the three specified causes for ending the tenancy, the Notice is hereby cancelled.

After hearing the parties' evidence, I advised the parties that the Notice is cancelled because I find the strata corporation has not proven any of the specified causes for ending the tenancy. I did not address the questions of whether the strata corporation met the requirements of Section 138(1) of the SPA to issue a notice to end tenancy, or whether a notice to end tenancy that is issued by a strata corporation can ever be effective in ending a tenancy.

Conclusion

The Notice to end tenancy is cancelled.

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 18, 2014

Residential Tenancy Branch

