



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, AAT, LAT, AS

Introduction

This hearing dealt with an application by the tenant for an order of possession and orders allowing him access, authorizing him to change the locks and authorizing him to sublet the unit. Both parties participated in the conference call hearing.

The tenant telephoned into the hearing and participated for 20 minutes, at which time he advised that he had borrowed someone's telephone and needed to give the phone back. He phoned back into the hearing after 3 minutes and participated for an additional 20 minutes until he again advised that he needed to give the telephone to the person from whom he had borrowed it. I told the tenant that I would wait for 5 minutes and then proceed with the hearing. The tenant did not access the hearing again. The hearing proceeded in his absence as the tenant was responsible to ensure that he had secure telephone access throughout the course of the hearing and it was well within his control to make those arrangements in the 2 ½ weeks between the time he filed his application for dispute resolution and the date of the hearing.

At the hearing, the tenant advised that although he had not checked the box on the application for dispute resolution indicating that he wished to dispute a notice to end the tenancy, it was his dispute of this notice that was the primary issue. I allowed the tenant to amend his application to include a claim to dispute the notice as the landlord was prepared to address that issue.

At the hearing, the landlord advised that he had been out of town and had only received the hearing documents 2 days prior to the hearing. He immediately submitted evidence, but although it was received by the Residential Tenancy Branch prior to the hearing, it had not reached my desk by the time the hearing began. The landlord was unable to serve the tenant with the evidence. Because the tenant did not receive a copy of the evidence, it was not considered in my deliberations.

At the close of the hearing, I asked the landlord to submit a copy of the notice to end tenancy. Both parties had agreed on the content of the notice during the hearing and I required the submission of the physical notice only to determine whether it met with the requirements of section 52 of the Act.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the tenant entitled to the other orders sought?

Background and Evidence

The parties agreed that on September 11, the tenant was served with a 1 month notice to end tenancy for cause (the "Notice"). The Notice alleged that the tenant was repeatedly late paying rent, that he had allowed an unreasonable number of occupants in the rental unit, that he had significantly interfered with or unreasonably disturbed another occupant or the landlord, that he had seriously jeopardized the health, safety or lawful right of another occupant or the landlord, that he had engaged in illegal activity that had or was likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord and that he had assigned or sublet the unit without permission.

The tenant argued that the Notice should be invalid as the landlord did not sign it.

The landlord called 3 witnesses. JM testified that she lives on the same floor as the tenant and for the past 3 years of her tenancy, there has been a continual stream of street people knocking on her window to get the tenant and drug dealers and prostitutes entering the building and looking through her window as they waited to meet with the tenant. She testified that at one point, a female guest of the tenant stuck her head through the window to ask JM about the tenant. She further testified that the tenant sells items daily on the common patio which attracts even more foot traffic and that he recently exposed himself to her at night when he was wearing a jacket but no pants.

The tenant acknowledged that he may have been wearing a jacket with no pants but insisted he was inside his own apartment at the time. JM testified that she could see him from the street and that he was in the common hallway.

KR testified that the tenant has a continual stream of visitors who bang on the entrance door until someone lets them in. He stated that he lives above the tenant and has been awakened innumerable times by noise from the tenant's suite. He further testified that

the tenant threatened to have him killed. The tenant had disconnected from the telephone conference call by the time KR testified.

GS testified that the tenant's guests urinate and defecate in the laundry room so as the on site manager, he has had to lock the laundry room to prevent this activity. The tenant has also run hot water continually to deprive others of hot water and only stopped when the police cautioned him. GS stated that prostitutes and drug dealers visit the tenant nightly and further testified that the tenant has threatened to kill him and blow him up. The tenant had disconnected from the telephone conference call by the time GS testified.

The landlord requested an order of possession if the Notice was upheld.

Analysis

First addressing the validity of the Notice, section 68(1) permits me to amend a notice if the person receiving the notice knew or should have known the omitted information and if in the circumstances it is reasonable to amend it. In this case, the tenant clearly knew who had served the Notice and I find that the tenant knew the information omitted. I order that the Notice be amended to include the landlord's signature and therefore find that the Notice is not invalid.

I prefer the evidence of the landlord's witnesses over that of the tenant. I found the tenant to be evasive and argumentative and he did not respond to a number of the allegations despite having been specifically asked. I recognize that the tenant was unable to respond to allegations which arose after he disconnected to the call, but the fact that several witnesses related consistent accounts of the tenant's activities and demeanour is sufficiently persuasive to lead me to find them credible.

I find that the tenant has allowed numerous guests to disturb other occupants and that he has on occasion threatened other tenants and the landlord's agent. I find that the tenant has significantly interfered with and unreasonably disturbed other occupants and the landlord and I find that the landlord has grounds to end this tenancy. As I have found that the landlord established this ground, it is unnecessary to address the other grounds for ending the tenancy. I dismiss the tenant's claim for an order setting aside the Notice.

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, 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.

As the tenancy is ending, it is unnecessary to address the remaining claims and I dismiss those claims.

Conclusion

The tenant's claim is dismissed and the landlord is granted an order of possession.

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: October 10, 2014

Residential Tenancy Branch

