



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on August 5, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated August 5, 2014?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$285 per month payable on the first day of each month. The tenancy agreement included the following clause as part of its Rules and Regulations:

“13. No smoking is permitted in any of the Terrace Senior Citizens Residence buildings, or within 30 feet of opening (windows, doors, air intakes, etc.)”

There are 23 rental units located on the rental property. The units are rented to low income seniors. Many of the residents are in ill health. Some have significant respiratory problems. .

The landlord received a number of complaints from other residents in the building about the tenant smoking on the rental property. This has significantly interfered with and unreasonably disturbed many of them given their respiratory problems. He testified that he has received a number of noise complaints and the other residents fear for their safety.

The landlord relies on the following grounds for seeking to terminate the tenancy.

Grounds for Termination

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The tenant testified he is 67 years of age and on limited income. He disputes many of the allegations made. He denies that he has smoked in his unit. He acknowledged that he smoked at places on the property but testified he was permitted to smoke at these locations. He further testified that once he received complaints he moved off of the property. He also denies that he has unreasonably disturbed other residents. He testified there is some banging on doors but this in essence is normal user and is caused by problems with the rental unit. He testified he has dealt with clutter complaints. The tenant further testified that he is leaving for Vancouver for an operation that is to occur on October 17, 2014. He will be in Vancouver for two weeks and will be recuperating with a friend on Haida Gwaii for a further month after that. The tenant raised a number of complaints about the condition of the rental unit. I determine that evidence was not relevant to the issues in dispute.

The landlord testified the tenant was given a warning letter on July 15, 2014 regarding the tenant's obligation that he is not to smoke within 30 feet of any opening (door or window). It also advises that other residents have serious respiratory issues and that as of the beginning of July the rental property has become a "smoke free property."

The landlord testified the tenant has significantly interfered with the quiet enjoyment of other residents by excessive noise, guests late at night, an altercation with other guests etc. and the other residents fear for their safety.

Analysis

The landlord has the burden of proof to establish sufficient cause to end the tenancy based on a balance of probabilities. An arbitrator must determine based on the evidence presented at the hearing whether there is sufficient grounds to end the tenancy as of the date of the Notice to End Tenancy. Where the landlord is seeking to end the tenancy based on complaints from other residents in the rental property it is preferable for those residents to testify at the hearing. The tenant is then given an opportunity ask questions of the other residents and the arbitrator is in a better position to weigh the evidence to determine the extent of the disturbances if any. It is possible

to an arbitrator to end the tenancy based on written letters but an arbitrator must weigh the evidence carefully and it must refer to conduct to the date of the Notice.

The evidence presented by the landlord is not sufficient to establish sufficient cause to end the tenancy. I accept the submission that the term of the tenancy agreement prohibiting the tenant from smoking within 30 feet of any opening is a material term of the tenancy agreement. However, the landlord failed to provide sufficient evidence to establish that the tenant breached that term between the period of July 15, 2014 (the date he received written notice) and August 5, 2014 (the date of the Notice to End Tenancy). The document entitled Complaints concerning Mr. TWW indicate there were complaints about smoking prior to July 15, 2014 and after August 5, 2014 but not during that period.

The landlord testified the tenant breached the quiet enjoyment of other residents. In particular the landlord expressed concerns about loud noise, the tenant's guests, loud music and an altercation he had with a guest of his in which the police were called. It appears however, that these incidents occurred after August 5, 2014.

Further, the landlord produced complaint letters from 7 different residents. However, those letters were written in early September and it is impossible to determine whether they relate to conduct prior to the date of the Notice to End Tenancy. In the absence of their testimony at the hearing it is difficult to determine the validity and extent of their complaints. For example, it is impossible to determine whether their safety concerns are valid based on conduct of the tenant.

Determination and Orders

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy based on the relevant evidence presented at the hearing. As a result I ordered that the Notice to End Tenancy dated August 5, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I have not considered the conduct of the tenant after the date of the Notice to End Tenancy as that was not relevant to whether the Notice dated August 5, 2014 was valid. Further, the tenant withheld the rent for September and has not paid the rent for October. The tenant stated he did this as the landlord has not made proper *repairs*. Section 26(1) of the Residential Tenancy Act provides as follows:

“Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The issue of whether the landlord was entitled to an Order for Possession based on non-payment of rent was not before me in this hearing.

Landlord's Application - Order for Possession

I dismissed the landlord's application for an Order for Possession and the cost of the filing fee as the tenant's application to cancel the one month Notice to End Tenancy was successful.

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 02, 2014

Residential Tenancy Branch

