



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kitsilano Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference all 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 hearing, each gave affirmed testimony and each party called one witness who each gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that he is an accountant of the landlord company. This month-to-month tenancy began in 2002 and the tenant still resides in the rental unit. Although not certain, the landlord's agent believes that rent in the amount of \$765.00 per month is payable in advance on the 1st day of each month although no written tenancy agreement exists. The landlord's agent was not able to say whether or not any pet damage deposit or security deposit were collected.

The tenant was served with a 1 Month Notice to End Tenancy for Cause personally on November 18, 2014. A copy of notice has been provided and it is dated November 18, 2014 and contains an effective date of vacancy of December 18, 2014. The reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site (with offensive behaviour);

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk (by water overflow and marihuana smoking).

The notations in brackets appear to have been added with a typewriter.

He also stated that the extensive amount of company that the tenant keeps has resulted in disturbances, such as noise, profanity, loud and abusive, and angry behaviour. Also, there are an unreasonable number of occupants in the rental unit, which he stated are really visitors, not occupants. The landlord has received written complaints of poor behaviour of visitors that come and go and while intoxicated have disturbed other tenants in the rental complex. He also stated that the tenant, or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, by smoking in the building, although the landlord's agent is not certain if the tenancy agreement prohibits smoking.

The landlord's agent also testified that the tenant has engaged in illegal activity that has damaged the landlord's property or put it at risk by smoking marijuana. Other tenants have complained that they don't like the smell and one has an allergy to it.

On 2 occasions the tenant flooded his rental unit and the rental unit below. Water had overflowed from the kitchen sink while the tenant watched a hockey game and forgot he was running water. The first time was on September 25, 2014 and again on November 16, 2014.

The landlord's witness testified that he has been the caretaker in the rental complex since 2000. There are 10 apartments in the building, and he believes the tenant's current rent is \$761.00 per month. The tenant paid a security deposit at the outset of the tenancy but the witness does not know how much, and no pet damage deposit was paid.

The witness also testified that he slipped both pages of the notice to end the tenancy under the door of the rental unit, but is not sure when, possibly on November 18, 2014 once management gave it to him to serve. He stated that the notice was issued because of complaints of other tenants and due to water damage coming from the tenant's kitchen. The verbal complaints were received, so the witness gave a verbal warning to the tenant about visitors. One of the complaints was about the tenant smoking marihuana in the rental unit and the complainant is allergic and couldn't breathe properly and felt wheezy. The witness stated that some of the friends visiting the tenant leave intoxicated and make offensive comments and gestures to other tenants, especially to the women. One of the guests was asked by the witness to not jiggle the door and the guest tried to kick the witness.

The witness gave a report to his boss and the boss decided to issue the notice due to the water damage into other apartments. The witness attended the tenant's rental unit for an alarm, and the tenant turned off the water from the kitchen sink after it had spilled over. Another time, neighbours below the tenant's rental unit complained of water

coming from the apartment above. The witness called the tenant and the tenant agreed that he had again allowed the water to spill over.

When asked if there were any other causes of water damage, the witness replied that he didn't remember. The witness also testified that the tenant asked the witness to pop a paint bubble on the ceiling and upon checking the apartments above and below the tenant's rental unit, the witness prepared a Work Order for the bubbles. He also testified that a storm caused a portion of the roof on the other side of the building to blow off.

The witness also testified that on one occasion the tenant came at him with a loud voice accusing the witness of spying on him. The witness was waiting for a contractor to do a repair on the 3rd floor. The stairwell that the witness was standing on was close to the tenant's apartment, and the witness showed the tenant that a vacant unit had a handyman in there. The witness also stands in that stairwell while waiting for prospective tenants to show them rental units that are available because the stairwell overlooks the parking lot. The tenant also attacked the witness once when the witness served a notice of rent increase and another time when there was a problem with the air conditioning. When asked if the tenant used foul language, the witness replied that the tenant told the witness that the witness doesn't know how to do his job.

The witness also testified that one of the confrontations with the tenant was because the tenant had been without heat for 3 months.

The tenant testified that he has been resident in the rental unit for 12 ½ years and the overflowing of the kitchen sink were accidents. The tenant was only about 15 feet away from the sink while watching a hockey game on TV when the first spill happened on September 25, 2014. The second was on the 9th of November, 2014 and the tenant received a notice the following day, which was slid under the door of the rental unit. On the second occasion the tenant was doing dishes and the fire alarm in the building went off. Other tenants on the floor were new tenants who knocked on the tenant's door. The tenant told them to see if they could smell smoke because of previous false alarms. The tenant then walked with them so they would feel better because the alarm kept ringing. A rag got stuck in the drain and the tenant had forgotten about the dishes and the sink overflowed, but no more than about 3 gallons spilled. The water wasn't running full blast and 3 or 4 wrings of the mop cleaned it up. He further testified that the building is on a slope and there is a 6 inch different slope from the tenant's kitchen sink to the entrance of the rental unit. He said that there is a gap in the door as a result and it's been shaved. The front door only opens half way.

The tenant further testified that other tenants have moved out because of water dripping in their rental units. Others moved into other suites within the complex for the same reason. The tenant's rental unit also has water stains on the ceiling, some of which are 3 or 4 years old. He stated that blaming him for the water damage is insane; the landlord took out walls of the rental unit looking for leaking pipes in the walls and ceilings due to a constant water leak. It was visible in the halls and the tenant reported

almost 3 months ago. The tenant showed the landlord's witness that a wall had water leaking, the landlord's witness touched the blister and it popped. It's still not fixed.

The tenant admits to the spills but not to water damages and stated that in the last 10 years there have been water issues throughout the complex and the tenant's bathroom has paint blisters. The dates were September 25, 2014 and November 9, 2014 and the tenant got the warning notice on November 10, 2014. The tenant had not breached the warning but still got a notice to end the tenancy on November 18, 2014. He stated that nothing in the evidence supports the landlord's accusations, and the Affidavits in support all say exactly the same thing and were sworn after the notice to end the tenancy was issued. They don't even show the correct date. The landlord talks about offensive behaviour and that's not what happened and that's not what's written on the notice. If it did happen, the tenant should have been told.

The tenant further testified that he has asked his friends about their behaviour while coming and going to the rental unit and they don't know what the complaints are about and nothing backs up the landlord's statement.

The tenant has a marihuana license and showed it to the landlord's witness, so he was aware of it. No one has complained to the tenant about the smoke or the smell, nor did anyone say anything to the tenant about an allergy or about cigarette smoking. Very little pot is smoked in the rental unit and the tenant is not the only resident in the complex who does. The tenant's rental unit is not a party house and people do not come or go while intoxicated, but the tenant has a right to medicate himself. Friends come by daily but none of them smoke pot and none of them or the tenant ever drinks alcohol.

The tenant also denies attacking the landlord's witness, and the tenant did not raise his voice. The tenant only asked how the landlord can leave tenants without heat for 3 months. He stated that the landlord's witness is a gentle person and the tenant never yelled or swore at him but may have raised his voice after guests caught him with his ear up against the wall of the tenant's rental unit. The landlord's witness said he was waiting for a maintenance man but should have waited downstairs. The landlord's witness got all shook up and the tenant told him not to do that again, then followed the witness upstairs and the maintenance man was already in there.

The tenant further testified that the notice of rent increase was also slid under the door of the rental unit. It was not served on the date on the document so the tenant caught up with the landlord's witness and told hi the dates were wrong. The tenant got the notice, showed it to the landlord's witness who said he'd get back to the tenant about it. Later that evening the landlord's witness slid another paper under the door of the rental unit saying that the dates on the notice are correct.

The tenant stated that the landlord doesn't like the tenant because the tenant wants what he pays for, and the parties have had issues before. About a year ago the parties attended a dispute resolution hearing on issues of the tenant's company, and before

that another hearing because the landlord wanted extra money saying that the tenant was using an extra parking space. The tenant won both cases, and testified that the landlord doesn't want to play by the rules, and the dates are all wrong. The landlord's evidence shows that the landlord gave the tenant a caution letter before the alleged incident took place, all Affidavits say the same. The tenant has put in complaints to the landlord several times with no response.

The tenant's witness testified that he has been a friend of the tenant for about 10 years and visits the tenant at the rental unit almost every day. He has not seen drunken, stupid people in the tenant's rental unit, nor has he heard or seen any abusive gestures by guests of the tenant. The witness does not smoke pot; he could be drug tested any time and could lose his job so cannot have any smell of marihuana on his clothing.

The witness was at the rental unit when the kitchen sink overflowed during a hockey game and about 1 ½ or 2 gallons of water spilled on the floor. The tenant mopped it up immediately which took 5 or 10 minutes. There is a 3 by 8 inch stain outside the tenant's door and the witness has seen the rental unit downstairs with water in the lights. Those tenants moved out. The landlords have been fixing water leaks in the tenant's rental unit several times in the kitchen and bathroom.

The witness also testified that he has never observed the tenant treat the landlord's witness abusively, but was visiting the tenant when the parties had a confrontation. The witness didn't hear it but the tenant told the witness about it later. The witness had been sitting in the living room and never heard a thing.

The witness also testified that the rental complex is a wood frame building with lots of challenges. The building is off its foundation and looks ready to tip over.

Analysis

Where a tenant disputes a notice to end the tenancy issued by a landlord, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have read the notice and I find that it is in the approved form and contains information required by the *Act*.

With respect to the reasons for issuing it, it appears to me that the first reason, Tenant has allowed an unreasonable number of occupants in the unit/site (with offensive behaviour) refers more to the landlord's disapproval of the company the tenant keeps, not with the number of occupants that are resident in the rental unit.

With respect to the second reason for issuing the notice, I find it very difficult to believe that the landlord fears damages of water in an apartment building that is off its foundation and has had a portion of the roof blown off in a storm. It's clear to me that the entire building contains water damage and it has not been exasperated by either of

the 2 spills caused by the tenant. I accept that the tenant was distracted firstly by a hockey game and then by a fire alarm which is the landlord's responsibility.

The *Residential Tenancy Act* sets out under what circumstances a landlord may end a tenancy, and the legislation cannot be construed by adding statements to the reasons for issuing the notice on the notice itself.

In the circumstances, I am not satisfied that the landlord has established the reasons for issuing the notice, and I hereby cancel it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause issued on November 18, 2014 is hereby cancelled and the tenancy continues.

This order is final and binding and may be enforced.

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: December 30, 2014

Residential Tenancy Branch

