



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 December 30, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant on January 14, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated December 29, 2014?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would begin on May 29, 2013 and end on October 29, 2013. The tenancy agreement provided that the rent was \$696 per month. The rent is subsidized and the tenant pays \$356 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$250 at the start of the tenancy.

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(f) and (h) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

47 (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or 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;

Analysis

The landlord seeks an Order for Possession based on the following evidence.

- Paragraph 16 of the tenancy agreement provides as follows:

"Conduct

Residents, occupants and guests shall not cause or permit any noise, disturbance or interference which, in the absolute discretion of the Landlord, is disturbing to the comfort, quiet enjoyment, or safety of other residents in the rental unit or residential property at any time, and particularly between the hours of 11:00 p.m. and 8:00 a.m. Residents will not do or permit anything to be done in the rental unit or the residential property that is obnoxious, objectionable, illegal or noisy or offensive, not to allow anything to be done which would become a nuisance or cause damage, interference or injury to the rental unit, residential property, any other resident or the Landlord. Breach of this term by any resident will be cause for termination of the tenancy agreement."

- On September 9, 2014 the landlord gave the tenant a breach letter indicating they had received an number of complaints respecting noise and violent behavior and warning that this was the final warning.
- The landlord produced an incident report dated September 6, 2014 and a letter from another tenant dated September 7, 2014 outlining significant complaints about the tenant..
- On September 23, 2014 the fire alarm went off for the entire building. The fire department attended and the landlord was required to enter all of the tenants' suites.

When they entered the tenant's suite it was determined the tenant had tampered with a smoke detector and alarm buzzer. The bill from the fire equipment service people to fix the equipment totaled \$413.90. The tenant agreed to make payment but has not made any payments.

- On October 21, 2014 the landlord wrote the tenant another breach letter indicating they are in receipt of complaints respecting noise and violent behavior.
- The landlord served a one month Notice to End Tenancy on the tenant dated October 21, 2014. The landlord subsequently withdrew the Notice on compassionate grounds as the landlord did not wish to end the tenancy a month before Christmas..
- On November 17, 2014 the landlord experienced a problem with water damage. A contractor was called and determined the water damage was "activated by the tenant. No evidence of fire or leaks caused this problem. It appears to have been the tenant." The landlord paid \$2705.33 to repair the damage caused.
- The landlord produced it log book sheet for September 17, 2014 and October 2, 2014
- The landlord testified they have received many complaints from other residents. She produced the complaints which were redacted so that it was not possible to determine who made the complaint.
- The Building Manager (Witness 1) testified that the tenant has sworn at him at least a dozen times. He testified the tenant the tenant needs more support that they can provide.

The tenant responded as follows:

- Someone broke into his room and the landlord failed to repair the broken door for an extended period of time despite promising to do so. He estimated he has lost \$4000 to \$5000 as a result of the theft. The tenant has been very frustrated by the failure of the landlord to act promptly to change the locks.
- The manager and the landlord have not provided him with any support.
- The tenant denies being abusive to the Manager. He testified he has a friendly relationship with all of his neighbors.
- He denied causing the second flood that cost over \$2700 to repair.
- The tenant testified he was present at the second flooding incident. Water broke out of the wall without warning. It was clearly an accident. He did not cause the flood.

Determination and Orders

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy for the following reasons:

- I do not accept the submission of the landlord that the landlord can rely on paragraph 16 of the tenancy agreement to the extent that the landlord has complete discretion to determine whether there has been a material breach of the tenancy agreement. This term is inconsistent with the Residential Tenancy Act and is not enforceable. However, I determined this section can be read down to provide that the tenant shall not cause any noise, disturbance or interference which unreasonably disturbs other residents and the landlord. This would be consistent with the Act which is implied into all tenancy agreements.
- After considering the disputed evidence of the parties I determined the tenant has caused extraordinary damage. I prefer the evidence of the landlord to that of the tenant that the tenant tampered with the sprinkler head leading to water damage that cost the landlord over \$2700. I determined this amount to extraordinary damage especially given the fact there was a previous incident where the tenant caused over \$400 in damage.
- I further determined that the tenant's conduct has amounted to a material breach of the tenancy agreement. I am satisfied that the tenant has unreasonably disturbed the landlord and other residents and in doing breach paragraph 16 of the tenancy agreement. The Building Manager testified the tenant has sworn at him at least a dozen times. The landlord has given the tenant a number of breach letters and previously gave a one month Notice that set to end the tenancy on November 30, 2014. The tenant had sufficient notice that his conduct was in question.

As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy. I order that the tenancy shall end. The tenant has paid the rent for February. The landlord stated it was holding the payment of rent in abeyance. In the circumstances I determined it was appropriate to set the end of Tenancy dated for February 28, 2015.

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an

Order for Possession. The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession effective February 28, 2015.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: February 09, 2015

Residential Tenancy Branch

