



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes:

MT; CNC

Introduction

This Hearing was scheduled to hear the Tenant's application for an extension of time to file an Application to cancel a Notice to End Tenancy and to cancel a One Month Notice to End Tenancy for Cause (the "Notice") issued February 18, 2015.

The hearing process was explained and the participants were asked if they had any questions. Both parties and their witnesses provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross examine each other's witnesses, and make submissions to me.

The Landlord acknowledged service of the Notice of Hearing documents and copies of the Tenant's documentary evidence. It was also determined that the Landlord hand delivered copies of its documentary evidence to the Tenant on March 13, 2015. I described the contents of each party's documentary evidence and the other party acknowledged receipt of the documents described.

Preliminary Matter

The Tenant has applied for an extension of time to file an application to cancel a one month notice to end tenancy. The time allowed under the Act is 10 days. The Tenant testified that he received the Notice to End Tenancy on February 18, 2015. The Tenant filed his Application to cancel the Notice on February 20, 2015. I find that the Tenant filed his Application within the required time limit and therefore his application for an extension of time is dismissed.

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on August 21, 2006.

The Landlord's witness HP and the Landlord's agent AH gave the following affirmed testimony:

HP testified that he moved into the suite next door to the Tenant IM on November 10, 2009, and that they share an adjoining wall in their living rooms. HP stated that IM has displayed “drunken misconduct” for a number of years. He stated that in April 2010, IM’s smoke alarm went off for 10 minutes. HP testified that he smelled smoke and banged on IM’s door, but there was no answer. HP stated that he heard a “crash” and was concerned that IM had fallen. HP called 911 for the fire department, who arrived shortly after. HP testified that IM told the fire department that he had fallen asleep, but that he believed that IM was inebriated because of the smell of alcohol on his breath and because it would be very difficult not to wake up with the sound of the smoke alarm.

HP testified that on April 21, 2013, he heard a crashing noise at 3:00 a.m. in the morning. HP stated that IM was “sitting on the hallway carpet with his pants around his ankles”. HP called 911 for the paramedics, who arrived quickly. HP testified that IM had defecated on the carpet and that he was in a state of “inebriation”.

HP testified that he has witnessed IM falling several times over the past months, but that his “behavior is accelerating”. HP stated that on January 5, 2015, IM was banging his doors and cupboards loudly in the evening hours and that he heard the IM “throwing up loudly” at 4:00 a.m. HP testified that on January 9, 2015, at 3:00 a.m., IM started banging doors “4 or 5 times” and that he heard IM fall to the floor on January 16, 2015, at 10:00 p.m.

HP stated that on February 5, 2014, IM woke him up at 1:30 a.m. with a “loud, shouting conversation” on the phone. He said that the conversation lasted until 2:30 a.m. and disturbed his sleep.

HP testified that on February 9, 2015, between midnight and 6:00 a.m., IM was in and out of his balcony door “a dozen times”, loudly opening and closing the door. HP stated that finally, at 6:00 a.m., IM loudly wished HP a “good night”.

HP testified that on March 8, 2015, at 11:00 p.m., he heard another crash and heard IM vomiting until 2:00 a.m. on March 9, 2015.

AH submitted that the Landlord has been “abundantly patient” with IM and has given him “numbers of warnings”, but IM will not modify his behaviour. AH submitted that IM’s behaviour is not “minor infractions” and that it is disturbing other occupants in the rental property.

The Landlord provided copies of two warning letters and two letters of complaint from HP in evidence.

IM and his witness ES gave the following affirmed testimony:

IM stated that he had received “no warnings at all” from the Landlord until he received the Landlord’s documentary evidence. IM stated that “no one talked to me” about any concerns with respect to his behavior and denied the allegations made by HP.

IM stated that he does not know HP and that HP never talks to him. IM stated that he has no enemies except HP, AH and the previous caretaker.

IM testified that the former caretaker who had written one of the letters was an “alcoholic troublemaker” who was fired by the Landlord.

IM denied that he was intoxicated on any occasion and stated that he was throwing up because he had food poisoning. He questioned how HP could hear him throwing up or talking on the phone. IM submitted that HP was “making up a story”.

Later on during his testimony, IM stated that he was talking loudly to a friend late at night because “I talk loud” and his friend was in another country with a different time zone. IM stated that the rental property is not properly sound-proofed.

ES testified that she is IM’s friend and has known him for 20 years. She stated that she has been at IM’s residence a couple of times and has used the balcony door. ES testified that there was “nothing wrong with the door, just a little squeak”. ES testified that IM is a peaceful person and that HP is a vulgar drunk. ES stated that the allegations against IM are not true.

AH gave the following response to the Tenant’s testimony:

AH testified that the former caretaker resigned and was not fired. He stated that he would consider giving IM more time to find alternative accommodation, but that he was concerned about escalating behavioural issues on the Tenant’s part. AH requested an Order of Possession to be effective March 31, 2015.

Analysis

When a tenant seeks to cancel a notice to end a tenancy, the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the notice to end tenancy. In this case, the Landlord seeks to end the tenancy because the IM has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find that IM’s witness’s testimony was essentially a character reference for the Tenant from a long term friend. IM’s witness acknowledged that she was not present when the alleged disturbances took place.

IM’s witness testified that she had used IM’s door and that it “squeaked” but was not loud enough to disturb IM’s neighbour. However, during IM’s testimony he alleged that the door made loud noises because it was not working properly and that the Landlord had refused to fix it.

The Landlord’s witness is IM’s neighbour, who was present during several of the occurrences. During the Hearing, IM contradicted his own testimony with respect to the phone call. At first, he stated that he was not speaking loudly on the phone between 2:30 and 3:30 a.m. Later in his testimony, he stated that he was speaking loudly.

The Landlord has a responsibility to the other occupants under Section 28 of the Act to provide them with freedom from unreasonable disturbance. Based on the documentary evidence and oral testimony provided, I find that it is probable that the Tenant has unreasonably disturbed another occupant of the rental property and that the Notice to End Tenancy for Cause is a valid notice to end the tenancy. Therefore, the Tenant's Application is dismissed.

Section 55(1) of the Act states:

- 55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the testimony of the parties, I am satisfied that the Tenant received the 1 Month Notice to End Tenancy on February 18, 2015. I find that the effective date of the end of the tenancy is March 31, 2015.

Conclusion

The Tenant's application is **dismissed without leave to re-apply**.

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., March 31, 2015**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: March 19, 2015

Residential Tenancy Branch

