



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rockwell Management Inc. and Roger Morris
and [tenant name suppressed to protect privacy]

DECISION

Codes: CNC

Introduction

The tenant applied for an order pursuant to section 47(4) of the Residential Tenancy Act to set aside a Notice of End a Residential Tenancy dated April 22, 2015 and setting the end of tenancy for May 31, 2015.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Notice?

Background and Evidence

A hearing was conducted in the presence of both parties. Service of the application was admitted. Based on the evidence of the landlord's agent RM, I find that the notice to end the tenancy was personally served by the landlord on April 22, 2015 by handing it to the tenant. The landlord's agent RM testified that on two occasions he observed the tenant's boyfriend CS meet the occupants of "beat up looking" vehicles outside the unit and then leave or return to the unit. RM testified that he believed these meetings were drug related transactions. RM testified that on one occasion he found a sewing needle with cannabis resin on the end of it a few steps from the tenant's unit.

RM tendered an anonymous letter from an individual dated May 2015 who stated that:

Since the tenants moved in he/she observed on numerous occasions: hand to hand transactions, different vehicles in and out, arguments outside the building, people moving up and down and in and out of the building at all hours, a lot of people in the hallways coming and going from the unit, cars honking for the tenants, people talking loudly about the quality of the drugs obtained from their dealer to the point where this person no longer feels safe in the building.

The tenant testified and denied all of the allegations. She states that she is allergic to cannabis, does not consume it and can not tolerate it anywhere near her. She is over 30 weeks pregnant and does not go out very often. She testified that she only gets visits from her mother, uncle or her boyfriend CS who all help out with chores. She has in fact complained about other tenants consuming cannabis in the building.

CS the tenants' boyfriend testified. He denied trafficking or consuming cannabis in or near the building. He testified that he may have met the tenant's uncle who is incapacitated in his car outside the building or an employer delivering money but vigorously denied trafficking in drugs. He stated that as this is a low income housing unit many vehicles that come here look "beat up."

The tenant requested I cancel the Notice to End the Tenancy and the landlord requested an Order for possession.

Analysis

The Notice to End a Residential Tenancy relies on section 47(1) (e) (ii) of the Residential Tenancy Act. That section provides as follows:

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

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,

In this matter the most relevant evidence of the landlord is hearsay and based upon unidentified witnesses' recounting of alleged events. There is a fundamental principle of natural justice that the tenant has a right to confront her accusers. In this case those people are anonymous and have not come forward to testify today. Accordingly I do not attach any weight to any of the allegations contained in the letter of May 2015 or any other alleged wrong doings of the tenant, not witnessed by the landlord personally.

I further find that the landlord's submissions that based on RM's observations the tenant or CS were involved in any illegal activity are speculative and not supported by any of the evidence.

I accept the tenant and her boyfriend's evidence. They both testified in a straightforward and credible fashion.

The burden of proof on an application for an order for possession for cause rests with the landlord who must on the balance of probabilities establish cause. This onus must

be satisfied strictly where the landlord seeks to end a tenancy. I find that the sum total of the landlord's evidence does not on the balance of probabilities constitute the requirements of section 47 (1) (e) (ii) of the Act. I therefore find that the landlord has failed to prove cause on the balance of probabilities. I allow the tenant's application.

Conclusion

I have cancelled the Notice of End a Residential Tenancy dated April 22, 2015 and setting the end of tenancy for May 31, 2015. The tenancy is confirmed.

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: June 16, 2015

Residential Tenancy Branch

