



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coast Foundation Society (1974)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Although the landlord submitted documentary evidence respecting incidents which had occurred after the notice to end tenancy at issue had been served, at the hearing I advised the landlord that I could only consider those events which preceded the date on which that notice was served.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The tenancy in question began in September 2013. On March 25, 2015, the parties were involved in a hearing in which a previous notice to end tenancy was at issue. That matter was settled and the landlord withdrew the notice to end tenancy on the condition that the tenant comply with certain terms which are laid out in that record of settlement.

The parties agreed that on September 21, 2015, the landlord served the tenant with a notice to end tenancy for cause (the "Notice") in which the landlord alleged that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and had seriously jeopardized the health or safety of another occupant or the landlord.

The landlord alleged that the tenant failed to comply with the terms of the March 25 settlement agreement in that he smoked in the building on May 6, 2015, he allowed a person entry into the building through the back door on September 12, 2015 and he verbally abused a staff member on August 6, 2015. The representatives of the landlord

who appeared at the hearing did not personally witness any of these events, but relied on written reports by staff members.

The tenant acknowledged that on May 6 he entered the building with a lit cigarette in his hand, but testified that when the staff member brought it to his attention, he immediately extinguished the cigarette. He testified that he was not aware that it was lit. The tenant acknowledged having admitted a person to the building via the back door, but testified that it was the boyfriend of another tenant who he found knocking on the door and he was unaware that this person had been banned from the building.

The tenant acknowledged that he had an interaction with a staff member on August 6, but testified that he did not in any way verbally abuse the staff member. He stated that he simply knocked loudly on the door and was admitted by the staff member.

Analysis

The landlord has the burden of proving on the balance of probabilities that they have grounds to end the tenancy. The landlord relied on the written record of their staff members and did not produce those staff members for cross-examination. As the tenant was the only other party who was present during the alleged incidents, I must give more weight to the tenant's testimony than to the written, unsworn statements of the staff members.

Although the terms of the March 25 settlement agreement specifically prohibits the tenant from smoking in public areas and verbally abusing the staff and requires him to admit "his visitors" only through the front entrance, the landlord still bears the burden of proving that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety of another occupant or the landlord as these are the 2 grounds on which the Notice is based.

I accept the tenant's version of events with respect to smoking in the building and I am unable to find that entering the building with a lit cigarette which was immediately extinguished caused significant interference, an unreasonable disturbance or seriously jeopardized anyone in any way. Although the landlord claimed that admitting guests through the back entrance could jeopardize occupants of the building, there is absolutely no evidence before me that this occurred in this instance. Further, the tenant did not admit one of his guests, but a party he recognized and had presumably seen frequently around the building and appears to have granted this individual admittance as a courtesy. The tenant made it clear during the hearing that he is now aware that he cannot open the back door for anyone.

As for the allegation that the tenant verbally abused the landlord, the staff member's written and unsworn statement claims that the tenant swore at him while the tenant denied having done so. As the staff member was not available for cross-examination, I prefer the tenant's evidence and I find that the tenant did not verbally abuse the staff member.

I note that in their written submissions the landlord also made allegations that the tenant's guests had not produced identification, but at the hearing the landlord indicated that they would not pursue those allegations.

I find that the landlord has failed to prove that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety of another occupant or the landlord and I therefore order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

Conclusion

The Notice is set aside.

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 01, 2015

Residential Tenancy Branch

