



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pars Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O, OPC,

Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The tenants applied to cancel a one month Notice to End Tenancy for cause. The landlord applied for an order of possession pursuant to the Notice to End Tenancy. The hearing was conducted by conference call. The tenants and the landlord's representatives called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated March 5, 2016 be cancelled?

Background and Evidence

The rental property is an eight unit apartment building in Chilliwack. The rental unit is a two bedroom apartment in the property. The tenancy began on September 1, 2013. The monthly rent is \$870.00 and the tenants paid a security deposit of \$380.00 at the start of the tenancy.

The landlord purchased the rental property from the former owner in December, 2015. the landlord's representative testified that he personally served the tenants with a one month Notice to End Tenancy for cause dated March 5, 2016. The Notice to End Tenancy was given to the female tenant on March 5th. The Notice required the tenants to move out of the rental unit by May 15, 2016, however the earliest date that the Notice could be effective to end the tenancy is April 30, 2016.

The stated reasons for giving the Notice to End Tenancy were that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; that they have seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The landlord

also alleged that the tenants have engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord.

The landlord's representative testified that the tenants smoke marijuana in the rental unit although the tenancy agreement specifically prohibits smoking inside the unit. The landlord's representatives testified that they have received written complaints from other occupants of the rental property about drug use by the tenants and large numbers of people coming and going from the rental unit day and night. Other occupants made complaints of fights and yelling by the tenants, both inside and outside the rental unit. Several occupants reported that the police have attended the rental property and arrested visitors leaving the rental unit. The landlord's representatives testified that the tenants also smoke crystal meth and other occupants have stated their belief that the tenants are dealing drugs, based on the high volume of traffic to and from the rental unit and the number of people seen in the vicinity of the rental property and the parking lot smoking what is believed to be crystal meth.

The landlord's representative testified that the Notice to End Tenancy was not given based solely on the reports of other occupants. The landlord's representatives testified that they have been working in the building renovating several vacant units and preparing them to be re-rented. They testified that they have noticed the tenants' marijuana use inside the rental unit and marijuana smoke and odour emanating from the rental unit when they have been working in the building.

The landlord's representatives also testified that the tenants have a dog in the rental unit contrary to the tenancy agreement. The tenancy agreement provides by clause F): "The tenant is allowed the following pets: ---- cat OK – No Dogs -----"

The tenant said they were unaware of the police making any arrests at the rental property. The tenants acknowledged that they use marijuana. The tenant said that he smokes outside the rental unit. He said that most of the occupants of the rental property also smoke marijuana. The tenant said that he does have a dog, he said that he received permission to have a dog from the former landlord, a realty company, but he said the permission was verbal and not in writing. He did not pay a pet deposit; he testified that the landlord did not ask for one. The tenants claimed that they have not engaged in any illegal activity on the premises and have not broken the lease. They said that the landlord wants them to move and is harassing and bullying them.

The landlord's representative responded to the tenant's testimony; he said that he spoke to the former property manager who confirmed that the former landlord did not give the tenants permission to have a dog in the rental unit.

The landlord's representative testified that there are young children in the rental property and the tenants' neighbours with a young baby are among the tenants who have made written complaints about marijuana use in the rental unit. The landlord's representative said that the landlord is dealing with another occupant of the rental property who is smoking marijuana in the building, but the landlord does not tolerate smoking or the smoking of marijuana in the rental property.

Analysis

The tenants acknowledged that they smoke marijuana, but the male tenant maintained that he smokes outside the rental unit. He submitted that most other tenants are also smoking marijuana in the building, including his neighbour with a young child.

The landlord's representatives testified that they have directly observed that the tenants have smoked marijuana in the rental unit, contrary to the tenant's testimony. The landlord provided evidence that four other occupants of the rental property have made written complaints about the tenants' disruptive conduct and drug use in the rental unit. I accept the testimony of the landlord's representative that the tenants do smoke in the rental unit contrary to the provisions of the tenancy agreement. The tenant admitted to using marijuana; his defence appeared to be that so also are other people in the rental property and his half-hearted denial that he smokes in the unit was not convincing. The tenants also have a dog in the unit, contrary to the explicit written provisions of the tenancy agreement. Oral testimony is generally not admitted when it is presented in an effort to alter or vary the explicit written terms of a contract. I do not accept the tenant's verbal evidence that he received permission from the former landlord to keep a dog and I find that the keeping of the dog in the rental unit contrary to the terms of the tenancy agreement and without the payment of a pet deposit does put the landlord's property at significant risk. I find that the tenants' use of marijuana in the rental unit has significantly interfered with and unreasonably disturbed other occupants of the rental property and I find that there is sufficient cause to justify the issuance of the Notice to End Tenancy. I therefore dismiss the tenants' application to cancel the Notice to End Tenancy without leave to reapply and I grant the landlord's application for an order of possession pursuant to the one month Notice to End Tenancy.

Section 53 of the *Residential Tenancy Act* provides that incorrect effective dates in a Notice to End Tenancy will be automatically changed to correspond with the earliest

date that the Notice could be effective under the appropriate section of the *Act*. The Notice in this case required the tenants to move out of the rental unit on April 15, 2016, but the Notice should end the tenancy on the last day of the month before the day that rent is payable under the tenancy agreement. The earliest date that the Notice can be effective is therefore April 30, 2016 and I grant the landlord an order of possession effective that day. This order may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

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: April 28, 2016

Residential Tenancy Branch