



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Brothers Agencies [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 for Cause dated April 22, 2016 and setting the end of tenancy for May 31, 2016. A hearing was conducted in the presence of both parties.

Issue(s) to be Decided

Is tenant entitled to an Order cancelling the Notice to End the Tenancy or is the landlord entitled to an Order for Possession?

Service and Preliminary Matters

The landlord's written evidence was excluded as it was not received by the tenant. However with consent the parties that I relied upon on the Notice to End the Tenancy which was only contained in the landlord's written submissions.

The tenant's written evidence was not received by the RTB or forwarded to me. Both the landlord and tenant were given the opportunity to read in any relevant and admissible evidence at the hearing. Service of the tenant's application was admitted by the landlord. The tenant admitted receiving the landlord's Notice to End the Tenancy on April 28, 2016.

Background and Evidence

The landlords' TD and BF testified that before lunchtime on April 20, 2016 they witnessed the tenant and two other individuals at the back of the court yard entrance to the residential tenancy complex. The tenant left them there and exited towards the street. TD and BF approached the individuals and asked them what they were doing. They replied "nothing" and left the location with their backpacks. TD and BF testified that shortly thereafter they observed the tenant meet the same individuals on the street in front of the residential property. They observed the tenant hand one of the individuals a plastic covered package and receive cash from that individual. They believed it was an illegal drug transaction. They were certain it was the tenant. TD is the current property manager and testified that he recognized the tenant as he knows him and stated that he was wearing a baseball cap at the time. BF offered no explanation how he recognized the tenant. Neither TD nor BF are occupants of the residential property and admitted that the transaction did not occur on the residential property.

AL a part-time employee of the landlord testified that on April 20th 2016 at about 4:30 PM she was in an apartment directly above the tenant's unit and observed the tenant whom she clearly recognized, just outside the entrance gate to the residential property, hand an individual a plastic covered package and receive cash in exchange. She testified that this was a drug deal in progress. She also testified that although the tenant attempted to obscure his identity by turning sideways, she was able to clearly identify him with certainty.

TD and BF testified that the location in which AL observed the transaction was on the residential property as it was in their parking lot. TD testified that many occupants have complained about their safety because of drug deals in close proximity to the building. TD submitted that ongoing drug dealing is and is likely to affect the safety of all occupants as it brings undesirable people to the residential property. TD testified that several occupants feared for their safety because of such activity. The landlord asked for an Order for Possession as soon as possible.

The tenant testified that he does not consume or sell illegal drugs. He denied both alleged transactions. He testified that many people deal in drugs in the neighbourhood and that April 20th was international Pot day so many such transactions were occurring and that he must have been mistakenly identified. He testified that he does not know any of the witnesses and they could not have recognized him. He submits that the allegations are false and asks that I cancel the Notice to End the Tenancy.

Analysis

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

Landlord's notice: cause

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,

(My emphasis added.)

The first requisite of section 47 (1) (e) (ii) is the commission of an illegal activity.

I appreciate that the tenant strongly denies that he was involved in any of these events however; I heard three witnesses who observed two independent events. While it is not likely that BF knew the tenant I accept that TD and AL did know who he was and were able to identify him. I find their testimony was credible and I find that it was more probable than not that the tenant is the one they witnessed on those two occasions on April 20, 2016. I have rejected the tenant's denials and preferred the landlord's agent's evidence over his. I also find that the landlord's witnesses' observations of plastic bags being surreptitiously exchanged for cash were most likely drug transactions. While I am not certain they were illegal drug transactions, the test for the landlord here is whether it is more probable than not that they were drug transactions, and I find that the landlord has met that test. I further find that drug dealing or selling is an illegal activity.

Policy Guideline 32-3 sheds some further light on the application of section 47 (1) (e) (ii)

Circumstances for Ending the Tenancy

The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, **this crime must have occurred in the rental unit or on the residential property.** (My emphasis added.)

I find that the illegal activity that TD and BF witnessed on the street around lunchtime on April 20, 2016, was not "on the residential property" and accordingly does not meet the criteria of 47(1) (e) (ii) of the Residential Tenancy Act. Accordingly I have not relied on that incident.

The incident that AL witnessed however was on the residential property. I find that AL clearly and mostly probably identified the tenant. I am satisfied that it was most likely an illegal drug transaction having all of those hallmarks: small plastic wrapped packages exchanged for cash on the street, or in this case outside a gate in the parking lot of the residential property.

I accept TD's evidence and submissions that such illegal drug activity did and was likely to affect the safety and security of other occupants who had in fact complained to him expressed these concerns for their safety. Accordingly I find that the tenant most likely was engaged in an illegal activity on the residential property on August 20, 2016 as witnessed by AL. I further find that such activity was likely *to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property*. As the landlord has satisfied the requirements of section 47(1) (e) (ii) of the Residential Tenancy Act, I find that the landlord has proven cause. I have dismissed the tenant's application to cancel the Notice and I have granted the landlord's request for an Order for Possession pursuant to section 55 (1) (a) and (b). I order that the tenancy shall end on the date set out in the Notice or as that has passed, two days after service on the tenant.

Conclusion

I have dismissed the tenant's application. As a result I granted the landlord an Order for Possession effective two days after service upon the tenant. 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: June 07, 2016

Residential Tenancy Branch