



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for Cause and other issues.

The tenant and the landlord attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2012 although this landlord took over and assumed the tenancy in the spring of 2013. The parties agreed that rent for this unit is \$410.00 per month and is due on the 1st of each month in advance.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) on December 15, 2016 in person. This Notice has an effective date of January 15, 2017 and provides the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the property by the tenant has:*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,*

The landlord testified that the tenant had been complaining about another tenant smoking in her unit. The landlord investigated and found no evidence to support this. The tenant disagreed and said he could smell smoke coming from her room. The landlord checked again and found no evidence of smoking in the other tenant's room. The tenant continued to complain and even complained to BC Housing. As a result the landlord had to respond to BC Housing.

The landlord testified that he arranged to meet with the tenant to address his concerns but he would not believe that this other tenant was not smoking in her unit. The tenant started to put signs on that other tenant's door and the landlord had to remove these. The other tenant felt this tenant was harassing her and she felt afraid to leave her unit. The landlord asked an RCMP officer to come and speak to the other tenant as she was frightened and that RCMP officer also stated to the landlord that his take on the situation was that the other tenant did not smoke in her unit. The RCMP officer spoke to this tenant about placing signs on the other tenant's door. The tenant feel that the landlord is against him as the tenant had previously brought an action against the landlord for compensation in Small Claims Court after he slipped outside.

The landlord testified that there was another incident when the tenant yelled at another female tenant. The tenant informed the landlord that he had apologised and that it was not his intention to yell at that tenant. The landlord spoke to the tenant about how he

could get along with other tenants and if possible to avoid the female tenant he is in conflict with about smoking. The following week the tenant again complained to BC Housing and the landlord had to respond again to them. The landlord testified that they had put signs up on the pathway to prevent tenants slipping in this area but this tenant removed those signs and the RCMP had to speak to him about this.

The landlord testified that if the tenant's application is unsuccessful the landlord seeks an Order of Possession for March 01, 2017.

The tenant disputed the landlord's claims. The tenant testified that there is a smell of smoke coming from other tenant's unit and that he reported this to the landlord but the landlord did not believe him. The tenant agreed he did put three signs up on that tenant's door about the smoking but since the RCMP spoke to him he has refrained from doing this again as he did not realize it could be deemed to be harassment. The tenant testified that he does not believe this other tenant is afraid of him as they speak in a friendly manner and the tenant has even helped her remove snow from her satellite dish when it stopped working. When the tenant informed her that he was being evicted she said she liked him and thought he was being evicted because he left his door open.

The tenant testified that he is friendly with all the tenants and helps them out when he can. It is not true that any tenants are afraid of him. The tenant referred to the letters provided by other tenants in support of him and to support his claim that there is a smell of smoke coming from the other tenant's unit.

The tenant testified that with regard to the landlord's claim that the tenant removed a sign from the pathway; the tenant was leaving the building early at 5.30a.m and he walked right into a sign as it was not well lit in that area. As soon as he arrived at his destination he called the landlord to inform him what had happened and that the sign had been left for the landlord to put back up.

The tenant seeks to have the Notice cancelled and for the tenancy to continue.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The landlord has the burden of proof in this matter to show that the reasons given on the Notice are legitimate reason to end the tenancy. The landlord must show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The tenant has presented an equally possible explanation of events concerning the incidents that occurred and a tenant is entitled to attempt to resolve issues amicable with another tenant before involving the landlord and to speak to a third party about any concerns.

Having considered the testimony and documentary evidence presented I am not satisfied the landlord has sufficient cause to end the tenancy based on the reasons given on the One Month Notice. The landlord has not shown that the tenant's actions in putting three notices on the other tenant's door has interfered with or unreasonable disturbed that other tenant or that the other tenant or any other tenants are afraid of this tenant. The landlord has insufficient evidence to show that the tenant deliberately removed safety signs from the property that may have endangered other tenants and the landlord has not shown that the tenant has significantly disturbed the landlord. The landlord is obligated to ensure tenant's concerns and complaints are properly investigated and if the landlord has to respond to complaints made to BC Housing then this is part of the role of being a landlord. Consequently, I allow the tenant's application to cancel the Notice.

However, I do caution the tenant to ensure that he refrains from contacting other tenants about issues that affect his tenancy and instead put any issues in writing to the landlord. The landlord must then investigate and provide a detailed reason to the tenant as a result of any investigation. If the landlord feels that other tenants are not smoking in

their unit then the landlord should carry out further investigations as to the source of any smell of smoke in the building.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated December 15, 2016 is cancelled and the tenancy will continue.

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: January 23, 2017

Residential Tenancy Branch