



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The parties exchanged documents and evidence before the hearing. Each party acknowledged that they received the evidence submitted by the other. The landlord named in this proceeding testified that she is a lawyer acting as agent for her mother who is the owner of the rental property.

Issue(s) to be Decided

Should the Notice to End Tenancy dated January 2, 2017 be cancelled?

Background and Evidence

The rental unit is a house in Vancouver. The tenancy began in 2014. I was not provided with a copy of a tenancy agreement. The tenant has applied to cancel a one month Notice to End Tenancy for cause dated January 2, 2017. The stated reasons for the Notice were as follows:

- The tenant is repeatedly late paying rent
- The tenant has allowed an unreasonable number of occupants in the unit
- The tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord
- The tenant has put the landlord's property at significant risk
- The tenant has engaged in illegal activity
- Breach of director's orders, more than 5 (five) people (handwritten addition by the landlord)

The tenant has referred me to an earlier decision with respect to this tenancy. In a decision dated August 30, 2016 an arbitrator addressed applications by the landlord for an order of possession and by the tenant to cancel a one month Notice to End Tenancy for cause. The arbitrator dismissed the landlord's application for an order of possession

and granted the tenant's application to cancel a one month Notice to End Tenancy for cause.

The landlord claimed that the tenant has been repeatedly late paying rent. She said that the tenancy agreement requires rent to be paid: "on or before the 1st of the month, including Sundays and holidays." The landlord said the agreement requires the rent to be paid before the first if that day is a Sunday or holiday. The landlord referred to a photocopy of a cheque dated August 1, 2016 and an image of an envelope with what she alleged to be a later postal date stamp. She also provided a copy of another envelope and cheque sent by registered mail with the handwritten notation: "Rec'd Oct-3 2016".

The landlord alleged that the tenant has allowed more than 5 occupants to live in the rental unit, contrary to the City of Vancouver zoning and development bylaw. The landlord submitted photographs taken of the interior rooms of the rental unit. She said that the pictures showed that there were 6 beds in the rental unit and this constituted proof that more than 5 people were living in the rental unit.

Several of the reasons stated for ending the tenancy were advanced by the landlord as grounds for ending the tenancy at the hearing on August 24, 2016. Following the hearing in a decision dated August 30, 2016 the arbitrator ordered that the tenant must ensure that there are no more than five occupants at any one time, including the tenant. The arbitrator cancelled the Notice to End Tenancy and ordered the landlord to comply with the provisions of the *Residential Tenancy Act* relating to the tenant's rights to exclusive possession and quiet enjoyment of the rental unit. The landlord was reminded of the rules restricting her right to enter the rental unit.

The landlord claimed that the tenant was putting the landlord's property at significant risk and has seriously jeopardized the health, safety or lawful right of the landlord. The landlord testified that the tenant has blocked a fire exit doorway. She said there were improper electrical connections and dangerous use of electrical appliances, extension cords and electrical connectors that constituted a fire hazard. The landlord claimed that there were missing light bulbs in some hallways and some smoke detectors had dead batteries. She complained that the fire extinguisher mounted in the kitchen was removed by the tenant. The landlord also alleged that the tenant was making improper use of a space heater. She referred to information and news items gleaned from the internet concerning house fires and submitted that the rental unit was at risk of fire due to the tenant's activities.

The tenant denied that there have been any late rent payments. He noted that rent is sent to the landlord by mail. The cheques are dated for the first of each month and the landlord's evidence as to the date that rent is deposited is not proof of late payment. He

referred to the landlord's evidence that the October rent payment was late because it was noted to have been received on October 3rd. The tenant's evidence consisting of registered mail tracking information showed that the rent was mailed on September 26, 2016 and delivery was attempted on September 28, 2016, but it was not picked up by the landlord until October 3rd. The tenant referred to other payments and of attempts to have the landlord meet to accept rent payments before the rent was due.

The tenant submitted evidence in the form of government mail sent to a person to show that a woman the landlord claimed was living in the rental unit was residing at a different address. He said that at each inspection conducted by the landlord there have been six beds in the rental unit. He said that there are no more than five people residing in the rental unit at any time and the presence of a sixth bed did not mean that all beds were routinely occupied. With respect to the landlord's claims that there were fire hazards in the rental unit, the tenant said that what the landlord referred to as a space heater in pictures she submitted was in fact a fan, not a heater. He said that a door that the landlord claimed was taped shut was actually taped open because the door handle was broken and it could not be opened from one side. The tenant submitted evidence that he made written requests to the landlord to have the door repaired.

The tenant testified that since the last hearing he has reinstalled doors and replaced the batteries in smoke detectors. The fire kitchen fire extinguisher is stored in a closet.

The tenant submitted that the Notice to End Tenancy is part of a continuing campaign by the landlord to evict the tenant because he declined to enter into a new fixed term tenancy at the expiry of the last one despite the landlord's protests. The landlord has argued in past proceedings that the tenancy ended July 31, 2016, but it was determined by the arbitrator in her August 30, 2016 decision that the tenancy continued on a month to month basis.

Analysis

The landlord has sought unsuccessfully to end this tenancy in past proceedings. With respect to the Notice to End Tenancy before me dated January 2, 2017, I find that the landlord has not proved that the tenant has been repeatedly late paying rent. Her evidence of late payments consists in part of notations she made to record the date she received cheques. The tenant provided evidence including Canada Post records to establish that payments were sent to the landlord well within time. The date that the landlord claimed to have received payments or when she negotiated cheques is not proof of late payment. I find that there is no basis to end the tenancy on the ground of repeated late payment of rent.

The landlord claimed that there are an unreasonable number of occupants in the rental unit. This matter was canvassed in the previous hearing. The landlord's assertion that there are an unreasonable number of occupants is based on the presence of six beds. The tenant denied that there are ever more than five persons occupying the rental unit at any time and there is a room for occasional guests. The landlord has the burden of proving the reason for ending the tenancy on a balance of probabilities. The tenant testified that there are and have been no more than five occupants living in the rental unit. I accept the tenant's testimony and I find that the landlord has not established that there are an unreasonable number of occupants living in the rental unit.

The landlord claimed that the tenant has jeopardized health or safety and put the landlord's property at significant risk. The landlord also claimed that the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or jeopardize lawful right or interest of another occupant or the landlord.

The Residential Tenancy Policy Guideline with respect to Illegal Activities provides in part that:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

The landlord has not provided proof that the tenant has engaged in any illegal activity. She has submitted that the tenant has removed a fire extinguisher from the kitchen and that he has made use of space heaters in a way that constitutes a fire hazard and puts the property at risk. The landlord did not submit evidence of any legal requirement to keep a fire extinguisher in the kitchen. I note that many of the landlord's pictures of the rental property are not current. The landlord relied on pictures taken during an inspection in October, but later pictures from a January inspection did not confirm that the October pictures represent the current state of the rental unit. The landlord submitted information from the internet concerning fire safety in support of her submission that the tenant has put the property at risk. The landlord did not have evidence to rebut the tenant's testimony that the smoke detectors are functioning. There is no requirement that the tenant must keep a fire extinguisher in the kitchen and

I do not accept the landlord's testimony that the tenant's use of electrical appliances, extension cords or connectors in the rental unit constitutes grounds to end the tenancy for cause.

The landlord has not established that the tenant is in breach of any orders made by the arbitrator in her August 30, 2016 decision. I find that the landlord has failed to establish on a balance of probabilities that there are sufficient grounds to end the tenancy for any of the reasons stated in the January 2, 2017 Notice to End Tenancy for cause. I order that the Notice to End Tenancy be and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

The tenant's application to cancel the Notice to End Tenancy has been granted. The tenant is entitled to recover the \$100.00 filing fee for his application. This order may be registered in the Small Claims Court and enforced as an order of that court. In lieu of enforcement the tenant may deduct the said sum from a future rent payment to the landlord.

Conclusion

The tenant's application has been granted the Notice to End Tenancy dated January 2, 2017 is cancelled.

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: February 27, 2017

Residential Tenancy Branch