



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC CONAGEMENT LTD.
and [tenant name ed to protect privacy]

DECISION

Dispute Codes cnc, rp

Introduction:

The tenant has applied for resolution of a dispute in the tenancy at the above noted address, and requests an order to cancel a Notice to End Tenancy, which alleges that the tenant or a person permitted on the residential property has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant also applied for an order for repair to the rental premises. Rule 1.1 of the Rules of Procedure states that the objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes. Rule 2.3 provides that claims made in the application must be related to each other, and that Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. In this case, the claim for repairs is unrelated in fact and law to the claim disputing the eviction notice. The claim for repairs is therefore dismissed, with liberty granted to reapply.

Issue(s) to be decided:

Should the Notice to End Tenancy be cancelled, or has the landlord established grounds to end this tenancy, and be issued an Order of Possession?

Background and Evidence

This tenancy began February 1, 2016. The current monthly rent is \$674.00. A one month Notice to End Tenancy was given to the tenant on February 2, 2017, to end this tenancy effective March 31, 2017 (not March 26, 2017, as is incorrectly stated on the notice).

The landlord's manager testified that the tenant constantly wants repairs to his premises. He pestered her constantly when she previously worked as a cleaner in the building, and now complains regularly to the new cleaner. A neighbour across the hall from the tenant has written letters of complaint. The tenant has accused the maintenance man of stealing things, and he has alleged that people leave things on his patio. The repairs formerly requested by the tenant have been done, yet he continues to request the same repairs.

The tenant testified that he has never asked the cleaning woman to make repairs, and that he has submitted proper written forms for repairs. He denies ever having a bad interaction with his neighbour, and denies swearing at her. He denies repeatedly asking

for repairs, but acknowledges he repeatedly requested that he receive hot water, which is now working.

The tenant's advocate submitted that the letters of complaint filed by the landlord should carry little weight, as the authors were not present at the hearing to be questioned. While the tenant has complained about repairs, this is a right of a tenant and is not harassment.

Analysis:

Although in general I found the tenant's testimony to be evasive and not convincing, the burden of proof to establish that there is cause to end a tenancy lies with the landlord. In the present circumstances, the landlord must demonstrate on a balance of probabilities that there has been a significant interference or an unreasonable disturbance caused by the tenant. I accept that the landlord's manager has been disturbed by the ongoing repair requests by the tenant, but the landlord has not demonstrated in her testimony or evidence that the disturbance is unreasonable.

The landlord referred to letters of complaint submitted by a female neighbour. Unfortunately, the neighbour was not present at the hearing to give evidence, to be questioned about her letters, and to rebut the contrary testimony of the tenant. Similarly, the allegations as to disturbances by the tenant of the maintenance man and the cleaner were not supported by first hand testimony from either. The landlord's testimony as to these persons being disturbed is hearsay evidence, as it is based upon reports given by them to her, and as such this evidence has limited probative value.

It may well be that the tenant's conduct is unreasonable, but this has not been sufficiently proven to meet the threshold of severity required to end this tenancy.

Conclusion

The onus of proof to end a tenancy lies with the landlord, and in this case the landlord has failed to meet that burden of proof. The subject one month Notice to End Tenancy is therefore cancelled, and the tenancy continues.

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: March 22, 2017

Residential Tenancy Branch