



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated October 8, 2017. He also seeks a monetary award claiming the landlord is restricting his right to take on a roommate. He seeks an order that the landlord complies with the law or the tenancy agreement in some unspecified regard.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the landlord have valid grounds for the Notice? Has she restricted the tenant's right to take in a roommate and has he suffered loss as a result? Should the landlord be the subject of a compliance order?

Background and Evidence

The rental unit is a two bedroom condominium apartment. The tenancy started April 1, 2015. The current monthly rent is \$1050.00, due on the first of each month. The landlord holds a \$525.00 security deposit.

The landlord has issued a one month Notice to End Tenancy on two grounds: first, that the tenant is permitting an unreasonable number of occupants in the rental unit, and second, that he or someone he has permitted on the premises has put the landlord's property at significant risk.

The landlord testifies that the written tenancy agreement between the parties states, in its addendum, that the tenant may have one other occupant in the rental unit. She states and refers to documentation showing that for most of the month of August 2017 the tenant had two other people staying with him in the rental unit.

She says that she has received calls from the police with reports that the tenant is “scamming” the people who come to stay in his rental unit. She refers to an email from the property manager from last March regarding a Mr. A.A. who rented a room from the tenant but could not get in.

She refers to a couple who rented the tenant’s spare room for the latter part of July and August. Mr. M.P. provided a detailed, signed statement indicating that the tenant is a “junkie,” doing hard drugs with others in the rental unit and smoking marijuana daily in the unit. Mr. M.P. also states that in his view the tenant attempted to defraud them out of their security deposit and lied about having given it to this landlord.

A third roommate, Mr. B.B. provided a signed statement about his time in the rental unit in October 2017. He confirms the tenant is smoking marijuana in the suite.

The landlord says the tenant or his friends introduced bedbugs into the rental unit. She presents a pest control letter to indicate this rental unit as the source. She also indicates that the tenant had an altercation on the street with a worker from the pest control company.

The landlord says the tenant was directed to remove a bedbug infested couch from the rental unit and that he failed to do so promptly, eventually moving it to the balcony.

The landlord says the tenant is operating a computer repair business out of the apartment and a “solar scooter” sales business. She indicates that such activity is contrary to the strata bylaws for the building.

She also says the tenant changed the locks.

The tenant testifies that his hopes for the scooter business failed long ago and that any computer repair work he might do is done offsite. He says his websites for both businesses are not active.

He denies being made aware of any restricting imposed by strata bylaws though he also indicates that he has asked for them.

The tenant admits that he had two other people staying in the rental unit in July and August and says they got along well together, contrary to the written statement of Mr. M.P.

He says he was “cautioned” to move the couch and requested written confirmation, ultimately moving the couch to the balcony.

He denies changing any locks.

In response to a question from his advocate, the tenant states he has never smoked a cigarette in his life and has not received any notices about smoking.

In response, the landlord says her son took his computer there for repair.

Analysis

The Notice to End Tenancy

The landlord has put herself in a difficult position by failing to complete the “Details of Cause(s)” portion of the one month Notice. That area directs:

DETAILS OF CAUSE(S): Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).

The purpose for details of the cause to end a tenancy is so that a tenant may better know exactly what it is that he has done or permitted so as to justify the Notice. With that information a tenant can decide to accept or challenge the Notice and, in the case of a challenge, can come to a hearing such as this one with foreknowledge of the case he will be expected to meet.

I consider the lack of detail in the Notice to be fatal to the landlord’s claim regarding putting her property at significant risk. However, in light of the evidence presented at hearing, certain observations should be made.

The landlord has argued that the tenant is violating strata bylaws. The tenancy agreement does not indicate that this rental unit is a strata unit nor does it refer to strata bylaws. There is no indication that the strata council has denoted any violation or violations by the tenant. Most importantly, the landlord has not shown how a violation of a strata bylaw has put her property “at significant risk,” which is the relevant basis for the Notice she has issued to the tenant.

The parties should be aware of Part 8 and particularly s. 146 of the *Strata Property Act*, SBC 1998, c. 43, which provides:

146 (1) Before a landlord rents all or part of a residential strata lot, the landlord must give the prospective tenant

- (a) the current bylaws and rules, and
- (b) a Notice of Tenant's Responsibilities in the prescribed form.

(2) Within 2 weeks of renting all or part of a residential strata lot, the landlord must give the strata corporation a copy of the notice signed by the tenant.

(3) If a landlord fails to comply with subsection (1) or (2), the tenant

(a) is still bound by the bylaws and rules, but

(b) may, within 90 days of learning of the landlord's failure to comply, end the tenancy agreement without penalty by giving notice to the landlord.

(4) If a tenant ends a tenancy agreement under subsection (3), the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent.

Regarding the bedbug issue, it may be that the tenant was tardy in complying with pest control directions to remove a couch, however, the landlord has not shown the tenant's inaction to have caused a "significant risk" to her property

The tenant's alleged altercation with a pest control employee on the street does not appear to be related to the landlord or the tenancy. If it did occur as described, it did not pose any risk to the landlord's property.

The evidence about a lock change is divided and does not establish that the tenant changed the locks. However, the tenant should be cautioned that if he does change a lock without the landlord's knowledge and consent he will be seriously jeopardizing the landlord's lawful rights and may be the subject of another eviction Notice.

The tenant's dealings with his roommates, though perhaps a revelation of character, is not a ground for eviction under either of the causes listed by the landlord in the Notice.

I find that the tenant has been smoking marijuana in the rental unit in clear violation of the no-smoking clause in his tenancy agreement. He is fortunate that smoking was not listed in the Details of Cause(s) portion of the Notice. I direct that the tenant immediately cease the smoking or permitting the smoking of any product; tobacco, marijuana or any other drug in the rental unit. I would counsel the landlord to conduct regular inspections to ensure compliance. Information about the reasonable frequency of inspections can be obtained by either party from an Information Officer at the Residential Tenancy Branch.

Regarding the allegation in the Notice that the tenant has permitted an unreasonable number of occupants in the rental unit, s.47(1)(c) of the Act permits a landlord to issue a Notice to End Tenancy where "there are an unreasonable number of occupants in a rental unit." This is not the same as saying "there have been an unreasonable number of occupants in the past." At the time this Notice was issued in late October, the two persons sharing the second bedroom had vacated and so, technically speaking there were not an unreasonable number of occupants as of the date of the Notice.

It should be noted that the addendum clause in the tenancy agreement restricts the tenant to one roommate and that roommate has to be approved by the landlord.

The Tenant's Claim for Money

As there has been no determination that the tenant is or is not restricted by the strata bylaws from having a roommate and as he has presented no evidence or argument to support his monetary claim, it is dismissed.

The Tenant's Claim for a Compliance Order

There is no basis shown in this evidence for a compliance order. The request is dismissed.

Conclusion

The tenant's application to cancel the Notice to End Tenancy dated October 20, 2017 is allowed. The Notice is hereby cancelled.

The remainder of the tenant's claim is dismissed.

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 07, 2018

Residential Tenancy Branch