

DECISION

Dispute Codes:

CNC, MNDC, DRI, LRE

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Should the Notice ending tenancy for cause issued on April 15, 2010, be cancelled?

Has the landlord given the tenant an illegal rent increase?

Is the tenant entitled to compensation for damage or loss in the sum of \$45.00?

Must the landlord be Ordered to return personal property to the tenant?

Background and Evidence

This tenancy commenced in 1989. The residential property consists of 4 suites on the main floor where the tenant lives and a total of thirteen suites in the building.

On April 16, 2010, the tenant received a 1 Month Notice ending his tenancy for cause, indicating that the tenant was required to vacate the rental unit on May 31, 2010.

The reasons stated for the Notice to End Tenancy were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and that the tenant has put the landlord's property at significant risk.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- A December 1, 2006 breach letter in relation to unpaid rent which resulted in the tenant shutting off the water main valve to the building and that a verbal warning was given for this incident and a written notice delivered;

- That in July 2007 the tenant was warned he must cease disturbing other tenants by yelling during the night, screaming in the night, TV use late at night and that a verbal warning was given;
- Reports in August 2008 of the tenant yelling at night and causing disturbances to other tenants due to noise coming from his unit;
- An April 8, 2010, letter from a neighbouring tenant who has lived in the building since September 2009, indicating that she is awoken 4 to 5 times a week by the tenant screaming, yelling, moaning, by his television; that he has come to her door late at night and yelled and swore at her; that he screams obscenities in the hallway; that she is frightened of him; that he has accused her of being a prostitute; that he wears his underwear in the common areas of the building; that she is afraid to do her laundry as he knows she has complained about him and that she attempts to avoid him but that it is difficult as he lives next to her;
- An April 9, 2010, letter from the neighbouring tenant indicating that she is moving out as she is "working too hard to deal with this guy;"
- An April 16, 2010 email from a tenant who reports his mother having seen the tenant wearing only his underwear in the hallway on 2 occasions during March; and that when you enter the hall late at night he will "fling his door open and glare;"
- A May 3, 2010, letter from an occupant who lives upstairs that has witnessed the tenant "wandering the halls in only his underwear, playing loud music and having his TV on very loud at early hours of the morning;"
- That after the Notice was served to the tenant he again turned off the water main to the building; and
- That the tenant's room is overly full of belongings and that he is hanging clothes from electrical wires.

The landlord's witness confirmed he had written an April 3, 2010, letter, sent to the landlord via email, for use during this hearing. This witness moved out of the building approximately 1.5 months ago and had lived in the building for 3 years. The witness described disturbing behaviour which he reported to the landlord on three occasions. He saw the tenant using the laundry room facilities for personal grooming, which he found very odd; he was disturbed by the smell of food cooking in the hallway and had seen the tenant walking the halls in his underwear.

The witness stated that on 3 occasions over a 4 to 5 month period he saw the tenant wear his underwear/boxer shorts in the halls, that he heard the tenant making loud noises and yelling and that he reported this to the landlord. On one occasion just prior to the witness moving out he detected a strong cooking smell in the hallway. When he investigated this he located the tenant who told him had been cooking fish with oil in the hallway. The smell was so strong that the witness left the building for several hours. The witness' letter indicated that he was aware of the tenant having used the hallway to cook on 2 occasions.

The landlord submitted a letter dated May 28, 2010, provided by a Fire Fighter with the City of Vancouver Fire and Rescue Services. This letter indicated that the occupant

next to the tenant had seen the tenant prop the fire door open. The witness' letter submitted as evidence for this hearing was read by the Fire Fighter who determined that if the tenant had been cooking with oil in the hallway it would be in contravention of the City of Vancouver Fire By-law and would pose a safety hazard to the occupants of the building.

The landlord played a recorded telephone message left for him in early April by the female occupant who lives next to the tenant. In this message she can be heard saying that the tenant is outside of her door, that she is going to call the police, as he is "freaking her out." The April 9 email indicated that she is moving out of the rental unit, as she is afraid to be alone and the tenant knows she has complained.

The landlord has talked with the tenant repeatedly and provided verbal warnings that the tenancy could end if the tenant continued to disturb others, but the landlord could not convince the tenant to cease disturbing other occupants.

The tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That the allegations are all absurd;
- That the letters submitted may have been fabricated;
- That he does not walk around in the hallway with his underwear on;
- That he does not own underwear;
- That he did cook one time in the hall as his power had gone out;
- That he has not tampered with the water main;
- That he does not yell in the hallways; that his neighbour has people coming and going at all hours;
- That he did scream at the tenant in unit 101 as they came home late and that he did go to their door; and
- That once he received the letter from the City of Vancouver he ceased hanging items from the wires in his room.

The tenant denied that the landlord had ever talked to him about his behaviour and maintains that they have a good relationship.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I considered the following factors:

- That the neighbouring occupant recently called the landlord indicating she was going to contact the police as the tenant was frightening her;
- That the tenant has yelled at his neighbouring occupant, from the hallway, calling her a prostitute, that she has seen him wearing his underwear in the hallways and that she is so frightened she is afraid to go into the laundry room in case the tenant is there.

In determining whether this tenancy should end, I gave extensive consideration to the right of other tenants to quiet enjoyment of their homes. The neighbouring occupant has now moved out due to the disturbances caused by the tenant. She has been subjected to yelling, screaming and allegations that were extremely disturbing. This individual now has no interest in the tenant's presence in the building as she has moved, but provided convincing written evidence in support of the landlord's Notice issued on April 15, 2010.

The witness also provided independent testimony in relation to concerns he had during his 3 year tenancy in the building. The witness now has no vested interest as to whether the tenancy continues or not. I found his testimony consistent and reliable.

Two independent witnesses reported seeing the tenant in the hallway, wearing only his underwear. The denial of the tenant that he even owns underwear is not convincing and I have relied on the independent testimony of the witness and witness statements that corroborate the reported behaviour of the tenant, repeatedly walking in the halls wearing only boxer shorts.

I also find that the landlord has made the tenant aware of the need to alter his behaviour and that a failure to do so would place his tenancy at risk. The tenant absolutely denied any disturbances have been caused to others and that the landlord had not provided any warnings that his behaviour was disturbing others. However, I find, that the tenant's confirmation that he did yell at the neighbouring tenant through her door, supports the reports made by others; that the tenant yells in the hallways. The neighbouring occupant became so frightened of the tenant that she would not go to the laundry room and recently moved out.

Further, the telephone message left by neighbouring occupant for the landlord, indicating that the tenant was yelling at her door and she was calling the police, is sufficient evidence that the tenant unreasonably disturbed another occupant of the building. The tenant does not have the right to yell at other occupants, frightening them to the point where they do not want to use the building laundry facilities.

I also find that even if the tenant cooked on only once occasion in the hallway, this placed other occupants in the building at significant risk of injury, as determined by the letter issued on May 28, 2010, by the City of Vancouver Fire and Rescue personnel.

Therefore, I find that the tenant's Application to cancel the 1 Month Notice Ending Tenancy for Cause issued on April 15, 2010, is dismissed.

At the start of the hearing the landlord made a verbal request for an Order of possession. Therefore, as I have dismissed the tenant's Application to cancel the Notice, I find, pursuant to section 55(1) of the Act; that the landlord is entitled to an Order of possession.

The balance of the tenant's Application will be heard at a reconvened hearing. Copies of Notices of Adjourned Hearing which provide conference call dialing instruction and the date of the hearing are enclosed with this decision for each party.

Conclusion

As I have determined that the landlord's have submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(1) the Act and that the tenant's Application is dismissed, I hereby find that the landlord is entitled to an Order of possession effective 2 days after service to the tenant, pursuant to section 55(1) of the Act.

This hearing will reconvene on the date indicated on the Notice of Reconvened Hearing enclosed with this decision, in order to hear the balance of the tenant's Application.

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 08, 2010.

Dispute Resolution Officer