

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. This hearing was conducted in person at the Residential Tenancy Branch Office in Burnaby.

Both parties attended the hearing and had opportunity to be heard. The tenant was accompanied by her advocate. Two witnesses attended for the landlord.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on March 19, 1989. On August 18, 2010, the landlord served the tenant with a one month notice to end tenancy for cause. The notice to end tenancy alleges that the tenant has seriously jeopardized the health or safety or lawful right of another occupant.

The landlord stated that an incident occurred on July 03, 2009 involving the tenant and his witness. The landlord stated that the delay of serving the notice to end tenancy, approximately 13 months after the incident was due to the delay in obtaining police reports.

The tenant described the incident and stated that on that day, she noticed water coming in through an open door and found the witness outside hosing down the window. The tenant attempted to close the door when the witness asked her not to. An argument ensued and the tenant stated that the witness blew smoke in her face which caused her to push her with an open hand to the side of the head.

The witness agreed that the tenant was inside attempting to close the door and since the witness was smoking and in close proximity to the tenant, may have inadvertently blown smoke in her face. The witness stated that the tenant hit her three times. In addition, the witness complained about the tenant's high handed behavior towards herself and other occupants of the building complex, which was a result of the preferential treatment the tenant received from the landlord.

The police were involved and despite the landlord's testimony regarding the time interval between the incident and the notice to end tenancy, the landlord did not file a police report. However, he stated that in conversation with a police officer regarding the incident, he found out that no charges were laid.

The witness stated that she visited the hospital due to the injury she suffered at the hands of the tenant. The hospital records indicate that the tenant did not suffer any internal injury at the time of her visit which was six days after the incident.

The landlord testified that the tenant has resided at the rental unit for over 21 years and there have been no incidents that he is aware of, in the last ten years. The tenant stated that she had a problem with the witness approximately three years ago which was settled with a peace bond. Both parties and the landlord's witness agree that since July 2009, there have been no other incidents or problems between these two tenants.

Analysis

In order to support the notice to end tenancy, the landlord must prove the grounds alleged, namely that the tenant has seriously jeopardized the health or safety or lawful right of another occupant.

Based on all the evidence before me, I find that the alleged assault on the witness who is an occupant of the housing complex is an isolated incident. The tenant and the witness do not get along, but since this incident have stayed out of each other's way and have maintained the peace.

I accept that on July 03, 2009, the tenant may have behaved inappropriately in response to the witness' actions, but I am not satisfied that the actions of the tenant were unprovoked and therefore I find that the actions of the tenant on that day do not justify bringing this tenancy to an end.

From the evidence filed by the landlord, it appears that this incident was isolated and not an ongoing pattern of behaviour for this tenant.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated August 18, 2010. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving other occupants of the residential complex, reason to complain. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside 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: October 08, 2010.

Dispute Resolution Officer