



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on May 7, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord on May 14, 2013. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling a one month Notice to End Tenancy dated May 7, 2013?

Background and Evidence:

The tenancy began on August 1, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$8000 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$400 at the start of the tenancy.

The landlord testified that on May 1, 2013 she discovered graffiti in the lobby and on the fire door that was in nail polish and was directed at her. She further testified that on May 6, 2013 she discovered a new set of graffiti in the elevator written in lipstick. She testified that other tenants witnessed three groups of people go into the elevator. The middle group included the tenant. The other tenants testified there was no graffiti in the elevator before the applicant entered. They further testified that the applicant had lipstick in her hand when she came down. It cost approximately \$30 to clean. It is disturbing to the landlord as the graffiti is a personal put down of her and she is concerned about the impact it might have on her 8 year son who is just beginning to read. The landlord testified that on occasion the tenant's friend has been extremely intoxicated and has been abusive to her mother.

The tenant denies that she caused the graffiti or that she saw any. She further testified that her friend is from Vancouver Island, rarely visits and denies that he was intoxicated.

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

Analysis

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities. The landlord did not actually witness the tenant's alleged acts of graffiti. The act on May 1, 2013 was not witnessed by anyone. The act that occurred on May 6, 2013 allegedly placed the tenant at the scene of the incident. However, the other tenants who placed the tenant at the scene did not testify. Further, it does not appear they actually saw the tenant place the graffiti in the elevator although there is evidence from which this could be inferred. The tenant's mother did not testify to establish the tenant's friend was intoxicated and abusive.

The landlord has the burden of proof. The tenant denies the allegations. In the absence of first hand evidence establishing the conduct I determined the landlord has failed to provide sufficient evidence to establish just cause to end the tenancy.

Determination and Orders

As a result I granted the tenant's application to cancel the one month Notice to End Tenancy. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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 06, 2013

Residential Tenancy Branch

