



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This is an application filed by the Tenant for an order to cancel a notice to end tenancy issued for cause and an order for the Landlord to comply with the Act, Regulations or Tenancy Agreement.

Both parties attended the hearing by conference call and gave testimony. As both parties attended the hearing and have confirmed receipt of the notice of hearing package. The Tenant has not submitted any documentary evidence. The Landlord has submitted late documentary evidence to both the Residential Tenancy Branch on November 13, 2013 and to the Tenant on November 12, 2013 in person. The Tenant has confirmed receipt of the Landlord's late evidence. The Tenant seeks an adjournment to properly respond to the Landlord's late evidence. The Landlord takes no position on the Tenant's request. I grant an interim decision adjourning the hearing for the Tenant to file documentary evidence in response to the Landlord's late documentary evidence package. Both parties were cautioned that no new evidence shall be submitted for this hearing. Only that evidence shall be accepted which is required to respond to the Landlord's documentary evidence or that of the Tenant's in response.

The hearing was adjourned to January 14, 2014, when both parties re-attended and the hearing continued.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Is the Tenant entitled to an order for the Landlord to comply with the Act, Regulations or Tenancy Agreement?

Background and Evidence

The Tenant seeks an order to cancel a notice to end tenancy issued for cause dated September 26, 2013 which was served by the Landlord. The notice states two reasons for cause.

The Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord's property manager states in a letter dated December 20, 2013 that "the tenant in #314 has been an ongoing concern from my understanding of building and residential safety issues at the Walton. Lookout staff has sent numerous letters asking this tenant in #314 to remove his bicycle and bicycle parts left out in the hallway of that residential floor at the Walton residence, and outside of the frontage of his residential room. Often, this tenant's bicycle has been tied to the ladder portion of the fire escape mechanism, seriously impeding contractor and staff access to the building's roof. This is a significant life-safety hazard jeopardizing both residents and staff security and safety at the Walton....moreover this condition has also jeopardized this tenant's personal safety as well...this occurrence is an unacceptable and intolerable life-safety condition that has greatly impacted a substantial disabled, mobility impaired and multi-barrier challenged population residing at the Walton residence." The Landlord has provided photographs of the hallway outside of the Tenant's doorway. The Tenant disputes this claim stating that the bicycles and bicycle parts near the door are not his. The Landlord relies on log reports and notes that state that the Tenant was asked many times to remove his personal property from the hallways.

The Landlord's Agent also states that the Tenant has seriously jeopardized the health and safety by having numerous verbal altercations with staff and other occupants. The Landlord states that many of the other occupants are too afraid to formalize a letter of complaint against the Tenant for fear of reprisals. The Landlord states that the Tenant has signed a crime free housing agreement and has violated it. The Landlord states that the Tenant receives many guests who have later been found to be "doing drugs". The Landlord's Agent, B.L. has confirmed his written statement of November 9, 2013 which states that the Tenant receives numerous guests who are found doing drugs on the premises by staff and other occupants. The Landlord states that many of the other occupants have repeatedly reported that the Tenant is a drug dealer. The Landlord relies on written reports by staff members because he states that many of the other tenants

do not wish to make any formal complaints for fear of reprisals from the tenant. The Tenant disputes these claims.

The Tenant's Advocate disputes the claims made by the Landlord by stating that there is a lack of evidence and that the Landlord is relying on generalities.

The Landlord relies heavily on the notes and reports made by staff members who have stated that many staff and occupants of the rental property have expressed repeated concerns that the tenant is bullying others and has frequent verbal altercations.

Analysis

On the reasons for cause, I find that the Landlord has failed to provide sufficient evidence that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The Landlord has failed to provide sufficient evidence and instead has provided generalities. This portion of the application is dismissed.

I find on a balance of probabilities that I prefer the evidence of the Landlord over that of the Tenant in that the Landlord has provided sufficient evidence that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. The Landlord has provided sufficient evidence to end the tenancy in the form of staff log notes and letters describing the issues as they became known. The Landlord has also provided direct testimony from 3 different witnesses (staff members) who repeatedly stated that the Tenant has interfered with and obstructed the other occupants and the Landlord. The Landlord has provided copies of a letter dated August 28, 2013 which states that many other tenants/occupants of the property have witnessed the tenant conduct illegal activity and that all tenants must abide by the crime-free housing agreement. There is also reference in the log notes that the tenant has disturbed other occupants with loud noises/music, other occupants and the Landlord's staff finding the Tenant's guests sleeping in common areas (ie, washrooms and kitchen) and roaming the hallways. The Tenant in his direct testimony has disputed that no violence has ever ensued, but has confirmed that he has many disputes with staff that have become heated.

In establishing grounds for the 1 month notice to end tenancy issued for cause dated September 26, 2013, I find that the notice is upheld and valid. The Landlord is granted an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel a notice to end tenancy is dismissed.
The Landlord is granted an order of possession.

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 28, 2014

Residential Tenancy Branch