



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CLC, MNDC, OLC, RR, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by the Tenants and the Landlord prior to the Hearing. The parties gave affirmed evidence and this Hearing proceeded on its merits.

Issue(s) to be Decided

This is the Tenants’ application to cancel a Notice to End Tenancy for Cause; for a monetary order for compensation for loss under the tenancy agreement; for an order that the Landlord to comply with the Act; to allow the Tenants to reduce rent for facilities agreed upon but not provided; and to recover the filing fee from the Landlord for the cost of the application.

Background and Evidence

The Landlord testified that he served the Tenants with the 1 month Notice to End Tenancy for Cause by posting the Notice on the Tenants’ door on January 14, 2009.

The Tenants filed an Application for Dispute Resolution on January 26, 2009. The Tenant AD testified that he mailed the Application for Dispute Resolution and Notice of Hearing package to the Landlords by registered mail on January 29, 2009. The Tenants amended their Application for Dispute Resolution on March 16, 2009. The Tenant AD testified that he mailed the Landlord the amended Application of Dispute

Resolution by registered mail on March 17, 2009. The Tenant provided a copy of the Canada Post receipts and tracking numbers for both registered mail packages.

Both parties admit service of the other party's documents and evidence.

The rental unit is the lower suite of one side of a duplex. The upper suite is occupied by the Landlord's family. Other than the Tenants, there are seven people occupying both sides of the duplex, including shift-workers, a home-office worker, a grandmother and two children.

1. Re: Notice to End Tenancy for Cause

Landlord's testimony and evidence

The Landlord gave the following reasons and testimony for ending the tenancy:

1. The Tenants have allowed an unreasonable number of occupants in the rental unit.
 - Originally, the tenancy agreement was with the Tenant AD and another tenant. Paragraph 7 of the tenancy agreement states: "Except for casual guests, no other persons shall occupy the premises without written consent of the Landlord." The Landlord submits that, contrary to paragraph 7 of the original tenancy agreement, in October, 2008, the Tenant AD allowed the Tenant AU to move in to the rental unit without the Landlord's permission.
 - In January, 2009, another occupant was observed to enter the rental property with his own key, for the better part of two weeks, while the Tenants were absent, and without the Landlord's consent. On January 12, 2009, the other occupant accessed the Landlord's private space, without permission of the Landlord.
2. The Tenants, or a person permitted on the property by the Tenants, have significantly interfered with or unreasonably disturbed another occupant or the Landlord.

- Since May, 2007, the Tenant AD (and after October 13, 2008, the Tenant AU) other occupants and the Landlords have been disturbed by the Tenants slamming doors, playing loud music at night, and talking late at night past bedroom windows. The Landlord has discussed this with the Tenants on many occasions, but the noise continued. The Landlord has made telephone calls to the Tenants asking them to turn down the music. The Landlord wrote a letter to the Tenants, a copy of which was entered into evidence, warning the Tenant to be mindful of noise levels and disturbing other occupants.
3. The Tenants have engaged in illegal activity that has, or is likely to: damage the Landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord. The Tenants, or a person permitted on the property by the Tenants, have seriously jeopardized the health or safety of another occupant or the Landlord.
- Paragraph 12 of the tenancy agreement states: "The Tenant is allowed no pets, nor smoking on the premises or property." The Landlord's wife has a health condition which makes it dangerous for her health to be subjected to first, second or third-hand smoke. In 2007, the Tenant AD allowed guests on the rental property to smoke. The Landlord immediately discussed this with the Tenant AD, who understood and apologized.
 - Last year, another incident occurred where the Tenant AD allowed guests to smoke on the property. Once again, the Landlords addressed the issue and the Tenant AD apologized.
 - On October 13, 2008, the Landlord entered into a new tenancy agreement, adding the Tenant AU. The severity of the health issue and the importance of not smoking on the property was again discussed with the Tenants AD and AU, before the tenancy agreement was signed.
 - On November 16, 2008, the Tenant AU and a guest smoked marijuana inside the rental unit.
 - In January, 2009, the other occupant smoked on the property many times, bringing third-hand smoke into the house.

- On February 1, 2009, the Landlord found marijuana-smoking paraphernalia and a lighter at the end of the driveway, beside the rental unit. The Landlord provided colour photographs of a colourful glass pipe and a lighter.
 - The house is insured as a non-smoking house.
4. The Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk.
- The Landlord stores over \$14,000.00 worth of personal property and equipment in a storage area on the property. The Landlord stated that the storage area (which houses the laundry facilities) is not a common area and that use of the laundry facilities are not included in the tenancy agreement. The Landlord submitted that the Tenants had the privilege of using the laundry facilities only if they agreed to abide by the rules. The rules were posted and included a rule that only adults on the rental agreement were permitted to use the facilities. On January 12, 2009, an unknown guest entered the private storage area without permission. Subsequently, the Landlord removed the persons articles of clothing, placed them on the Tenants' door step, and locked the storage area to protect the Landlord's private property.

Tenants' evidence and testimony

On March 18, 2009, the Tenants gave the Landlords written notice to vacate the rental unit on April 30, 2009.

The Tenants submit that the Landlord does not have cause to end the tenancy and provided the following testimony in answer to the Landlord's reasons for cause:

1. The Tenants have allowed an unreasonable number of occupants in the rental unit.
 - The Tenants met with the Landlords two days after the Tenant AU occupied the rental unit. The purpose of the meeting was to gain the

Landlord's consent for the Tenant AU to become a tenant. As a result of the meeting, the Landlords entered into a new tenancy agreement with the Tenant AU and the Tenant AD.

- The other occupant was visiting from another country and stayed as a guest of the Tenants for a total of 8 days. The Tenants acknowledge that their guest made use of the laundry facilities.
2. The Tenants, or a person permitted on the property by the Tenants, have significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- The Tenants denied that they have played loud music at night, talked in loud voices or slammed doors. The Tenants testified that the duplex is a wooden structure and that the sounds from the Landlord's upstairs suite have disturbed them. The Tenants testified that the occupants of the other side of the duplex have never complained about loud noises coming from the Tenants' suite.
3. The Tenants have engaged in illegal activity that has, or is likely to: damage the Landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord. The Tenants, or a person permitted on the property by the Tenants, have seriously jeopardized the health or safety of another occupant or the Landlord.
- The Tenant AD testified that he has never had a conversation with the Landlord about smoking.
 - The Tenants stated that the Tenant AU did smoke a marijuana cigarette in the rental unit. The Tenants testified that the Tenant AU apologized to the Landlord and promised that it would not happen again.
 - The Tenants stated that the guest who stayed with the Tenants in January, 2009, was a smoker, but that he did not smoke in the rental unit, the laundry room or the property.
 - The Tenant AU stated that the pipe and lighter depicted in the Landlord's photographs did not belong to him and that he does not know where the pipe came from.

- The Tenants disputed that the house was insured as a non-smoking house.
4. The Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk.
- The Tenants stated that the storage room is common property. It houses the laundry facilities that the Tenants were using until the Landlords locked them out.
 - The Tenants deny putting the Landlord's property at significant risk.

The Tenants dispute that the Landlord has cause to end the tenancy and ask that the Notice to End Tenancy be cancelled.

2. RE: Tenants' application for compensation for loss of facilities

The Tenants are applying for rent abatement for January, February and March 2009, together with rent reduction for April, 2009 in the amount of \$700.00, for loss of laundry facilities, as follows:

• Jan 12 – 31/09	\$100.00
• Feb/09	\$200.00
• Mar/09	\$200.00
• Apr/09	<u>\$200.00</u>
TOTAL	\$700.00

The Tenants testified that use of the laundry facilities was not part of the written tenancy agreement, but that the Landlord had allowed the Tenants to use the facility for almost two years and submitted that therefore, because of the passage of time, it was an agreed-upon term of the tenancy agreement.

The Landlords deny that use of the laundry facilities were a part of the tenancy agreement and submitted that they allowed the Tenants to use the facilities as a "privilege", as long as the Tenants complied with rules that were clearly posted.

3. RE: Tenants' application for damages for loss of peaceful enjoyment

The Tenants applied for damages in the amount of \$2,100.00 for loss of peaceful enjoyment. The Tenants testified that throughout the tenancy, the Landlord has harassed the Tenants by: loudly stomping on the floor (the ceiling of the Tenant's suite) to tell them to be quiet, on a daily basis; telephoning the Tenants to tell them to be quiet; placing the Tenants in uncomfortable and embarrassing situations by videotaping guests at the Tenants' suite, blocking the Tenants' car from leaving the rental property; and phoning the Tenant AU's father to complain about his son smoking marijuana and threatening to go to the police. The Tenant AU's father is also the owner and manager of the company that employs the Tenant AD. The Tenant AD stated that the Landlord knows this, and has deliberately put the Tenant AD in a very uncomfortable work environment as a result. The Tenant AD submitted that the Landlord, in contacting the Tenant AD's employer, intentionally meant to cause damage to his professional life and was an attempt to force the Tenants to drop their dispute. The Tenants submitted that the Landlord has not complied with Section 28 of the Act, which states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Tenants provided 5 letters from 5 different people attesting to: witnessing the Landlord or his wife taking photographs/videos of the Tenants and their guests; being present when the Landlord stomped on their floor when the Tenants' music was not

loud (the guests were speaking at a normal volume while the music was playing); and being present in the Tenants' suite when noise from the Landlord's suite was disturbing the Tenants and their guests.

The Tenants provided a letter from the Tenant AD's employer stating that the Landlord intimidated that if the Tenants' dispute was not retracted, he would go to the police with evidence against his son. The Tenant AD's employer further stated that he believed that the Landlord was harassing the Tenants.

The Landlord requested that they be afforded more time to respond to the Tenant's amended application, with respect to the claim for damages for loss of peaceful enjoyment. The Landlord stated that they did not receive the Tenants' amended claim until March 19, 2009 and that they did not have time to prepare and submit evidence to dispute the Tenants' claim.

Analysis

1. RE: Tenant's application to cancel the One Month Notice to End Tenancy

With respect to the reasons given by the Landlord to end this tenancy, I make the following findings:

1. The Tenants have allowed an unreasonable number of occupants in the rental unit.

The Tenants and the Landlord entered into a new tenancy agreement on October 13, 2008, two days after the Tenant AU occupied the rental unit. Therefore, the Landlord accepted the Tenant AU as a tenant when they signed the tenancy agreement. The other occupant was a guest, who was visiting for less than two weeks. The Tenants have a right to entertain guests in their own home. There is no evidence that three people occupying the rental unit constitutes an unreasonable number of occupants. I dismiss this reason as sufficient cause to end the tenancy.

2. The Tenants, or a person permitted on the property by the Tenants, have significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Tenants testified that they did not play the music loudly and that the soundproofing in the rental property was not good. The Tenants testified that they could hear the Landlord in their day-to-day movement about their suite. There was no evidence that the neighbours on the other side of the duplex were disturbed by noise coming from the Tenants' suite. I dismiss this reason as sufficient cause to end the tenancy.

3. The Tenants have engaged in illegal activity that has, or is likely to: damage the Landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord. The Tenants, or a person permitted on the property by the Tenants, have seriously jeopardized the health or safety of another occupant or the Landlord.

It is clear from the evidence of both parties that the tenancy agreement included a term that the rental property was non-smoking. It is clear from the evidence of both parties that the Landlord's wife has health issues which are compromised by first, second, and third-hand smoking. Based on the oral testimony and evidence provided by both parties, I find that the Tenants, or a person permitted on the property by the Tenants, have breached a material term of the rental agreement and in so doing, have seriously jeopardized the health or safety of another occupant or the Landlord. I find that this is sufficient cause to end the tenancy.

4. The Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk.

There is no evidence that the Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk. I dismiss this reason as sufficient cause to end the tenancy.

The Landlord has proven cause to end the tenancy because the Tenants, or a person permitted on the property by the Tenants, have seriously jeopardized the health or safety of another occupant or the Landlord. The Tenants' application to cancel the One Month Notice to End Tenancy is dismissed. Section 47(2) of the Act states:

Landlord's notice: cause

47 (2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to Section 90 of the Act, a document given by posting on a door is deemed to be received on the third day after it is posted. The Notice to End Tenancy was posted to the Tenants' door on January 14, 2009. Therefore, the Notice to End Tenancy was deemed to have been received by the Tenants on January 17, 2009. Pursuant to Section 47(2) of the Act, I find that the tenancy ended on February 28, 2009.

The Landlord requested an order of possession and I make that order.

2. RE: Tenants' application for compensation for loss of facilities

There is no clause in the tenancy agreement with respect to laundry facilities. However, the Tenants had use of the laundry facilities until mid January, 2009, when the Landlord removed access to the laundry facilities. Therefore, I find that the use of laundry facilities were part of the tenancy agreement and allow the Tenants compensation for loss of the facilities in the amount of \$105.00, calculated at 3 loads per week at \$5.00 per load, as follows:

January 14 to 31, 2009	\$37.50
February, 2009	<u>\$60.00</u>
TOTAL:	\$97.50

3. RE: Tenants' application for damages for loss of peaceful enjoyment

The Landlords requested an adjournment to be allowed more time to prepare an answer to this portion of the Tenants' claim. The Landlords were served with the Tenants' amended application on March 19, 2009, which is well within the 5 day time period allowed for exchange of evidence between the parties and I dismissed the Landlord's application for an adjournment.

I find that the Tenants were deprived of their right to peaceful enjoyment of the rental unit and award the Tenants \$500.00 in damages.

I make no order with respect to the Tenants' application to recover the cost of the filing fee from the Landlord.

Conclusion

I grant the Tenants a monetary order under section 67 of the Act for \$597.50. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Under section 55 of the Act, and based on the above facts I find that the Landlord is entitled to an Order of Possession and I hereby issue the order effective two days from service of the order. This order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

April 2, 2009
