



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC LAT OPC FF

Introduction

This hearing dealt with applications by the tenants and the landlord. Two tenants from the upstairs unit, TM and NB, and one tenant from the downstairs unit, IG, applied to cancel notices to end tenancy for cause, as well as for an order authorizing the tenants to change the locks to the rental unit. The landlord applied for orders of possession against the tenants.

One tenant from the upstairs unit, TM, the tenant from the downstairs unit, IG, and one of the landlords, GF, participated in the teleconference hearing.

Issue(s) to be Decided

Are either of the notices to end tenancy valid?

Should the tenants be granted authorization to change the locks?

Background and Evidence

The tenancy with the upstairs tenants began on July 1, 2008. None of the parties provided evidence of the commencement of the tenancy for the downstairs tenant. In September 2009 the upstairs tenants and the landlord participated in a dispute resolution hearing that resulted in a settlement agreement. The tenants agreed to allow the landlord to show the unit to prospective buyers on set days and times, and also to be flexible with changes in those dates and times.

On March 23, 2009 the landlord served two notices to end tenancy for cause, one to the

upstairs tenants and one to the downstairs tenant. The notice issued to the upstairs tenants cited seven reasons for ending the tenancy, including breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The notice issued to the downstairs tenant cited all of the same reasons for ending the tenancy as the notice issued to the upstairs tenants, with the exception of breach of a material term.

The evidence of the landlord on cause for ending the tenancies was as follows. The tenants have not been cooperating with the landlord's attempts to sell the property. The tenants refuse to answer calls from the real estate agent or allow showings, as per the settlement agreement. The landlord submitted as evidence an email from the real estate agent, dated March 23, 2009. In the email the agent informed the landlord that he had called the tenants at different times of the day, and when he finally reached the downstairs tenant, he was uncooperative. The upstairs tenants never answered or returned the agent's calls. Further, the tenants were keeping the property in an unsightly manner, with garbage and debris piled outside, and this was compromising efforts to sell the property.

The landlord stated that the tenants have, as suggested by the real estate agent, been making the property unattractive to potential buyers and depreciating the value of the property, as well as failing to maintain a standard of cleanliness and causing potential health and safety issues by leaving garbage outside that may attract rats, raccoons or coyotes. The landlord submitted as supporting evidence several photographs of the exterior of the house and the property, which showed significant garbage and other debris around the property.

In regard to breach of a material term, the landlord referred to a clause of the upstairs tenants' tenancy agreement, which only permitted two dogs to be resident on the property and no dogs inside the home at any time. In November 2008 it came to the landlord's attention that there were four dogs on the property, including one inside the house. The landlord gave the upstairs tenants a written warning regarding this breach. After the landlord gave the warning letter, they found that a dog was still living inside the

house.

The landlord did not specify either in her testimony or her documentary evidence what the specific grounds were for ending the tenancy of the downstairs tenant.

The response of the tenants was as follows. The upstairs tenant, TM, stated that in fact they did comply with the settlement agreement to allow showings of the house. In regard to the garbage on the property, TM stated that at least some of the debris was left by previous residents, and the tenant does not have the time or interest in throwing debris around the property. Any food garbage would certainly attract bears, and with young children in the house the tenant would not take any steps to jeopardize their safety.

In regard to the dog inside the house, TM acknowledged that one dog was in the house temporarily, but was restricted to a small penned-off area.

The tenants' evidence in regard to their application for authorization to change the locks was as follows. On March 17, 2009 a tree on the rental property was blown down in the wind and severed the power, phone and cable lines to the house. The tenant TM left a voicemail message for the landlord regarding the problem. The next day, the landlord told the tenant that she had entered the rental unit while there were not there, on the basis that it was an emergency and she had to enter. The tenants feel that the landlord did not have the authority to enter without notice and their privacy was violated.

The downstairs tenant, IG, agreed with TM's evidence.

The landlord's response to the tenants' application for authorization to change the locks was as follows. When the landlord received the message regarding the fallen power lines, she first attempted to call the tenants back but was unable to do so. The landlord immediately went to the rental property and spoke with the BC Hydro supervisor. The supervisor stated that a certified electrician would have to enter the house and check the breaker box and panel before power could be restored to the unit. When the

electricians arrived, the head electrician detected a strong smell of marijuana, and told the landlord that he was required by law to determine if the house was a marijuana grow-op before he could inspect the panel. On the basis that it was an emergency situation where the house was without power or heat and the tenants could not be contacted, the landlord gave the electrician permission to enter the house. The landlord emphasized in the hearing that she was not seeking orders of possession based on the lifestyle of the tenants.

Analysis

In regard to the notice to end tenancy issued to the upstairs tenants, KM and NB, I find that the landlord has established that KM and NB, contrary to the settlement agreement, have seriously jeopardized the landlord's right to sell the house. I accept the testimony of GF and the email of the real estate agent as credible and plausible. As I accept this ground for ending the tenancy as valid, I need not consider the other alleged grounds for ending the tenancy. I find that the notice to end tenancy issued to KM and NB is valid, and the landlord is entitled to an order of possession pursuant to that notice.

In regard to the notice to end tenancy issued to the downstairs tenant, IG, I am not satisfied that the landlord established sufficient cause to end IG's tenancy. The landlord did not establish that any actions of IG jeopardized the landlord's right to sell the house or that there was sufficient cause under any of the other grounds alleged. I therefore cancel the notice to end tenancy for IG, with the effect that IG's tenancy continues.

In regard to the tenants' application to change the locks, I need only consider that application in regard to the continuing tenancy of IG. I find that the landlord did act appropriately in response to the fallen power lines. Further, even if I did allow the tenant to change the locks, the tenant would be required to provide the tenant with a key to the new lock. I therefore dismiss that portion of the tenant's application.

Conclusion

I grant the landlord an order of possession for the upstairs tenants. The tenants must be served with the order of possession. Should the tenants 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.

I dismiss the portion of the landlord's application regarding an order of possession for the downstairs tenant.

As the landlord's application was partially successful, the landlord is entitled to recovery of half of the filing fee, in the amount of \$25, as against the upstairs tenants.

As the portion of the tenants' application regarding cancellation of the notice to end tenancy against the downstairs tenant was successful, the downstairs tenant is entitled to recovery of half of the filing fee, in the amount of \$25, against the landlords. The downstairs tenant may deduct \$25 from next month's rent.

Dated May 13, 2009.