



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

CNC, RP, PSF, RR, MNDC, & FF

Introduction

This hearing dealt with an application by the tenant disputing a Notice to End Tenancy for cause. In addition the tenant is seeking compensation due to loss of services or facilities that are to be provided under the tenancy agreement and for loss of quiet enjoyment.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issues to be Determined

Should the one month Notice to End Tenancy for cause be set aside? Is the tenant entitled to compensation due to loss of an essential service or facility? Is the tenant entitled to compensation for loss of quiet enjoyment of the rental unit?

Background and Evidence

This tenancy began on March 1, 2008 for the monthly rent of \$800.00. The tenant paid a pet and a security deposit totalling \$800.00 on March 1, 2008. The tenancy was for a fixed term lease ending on February 28, 2009 and then reverted to a month to month tenancy under the same terms.

The tenant is seeking compensation related to alleged loss of quiet enjoyment of the rental unit and the loss of a parking spot near the rental unit. The tenant also sought to dispute the one month Notice to End Tenancy; however, acknowledged in the hearing that the rental unit is being decommissioned by the municipality and no longer has a stove.

Each party provided extensive written evidence for this hearing and it was reviewed and discussed during the hearing. The issues identified during the hearing included:

- What agreement did the parties have respecting parking?
- Were the tenant's guests using the parking or drive way in a safe and appropriate manner?

The tenant's representatives argued that the landlord has restricted the guest's right to use a parking spot. They claimed that it was agreed that the tenant would have a spot right near the rental unit. The tenant's representatives acknowledged that there were some issues and disputes when they parked in this location or parked in the drive way when picking up the tenant. The tenant also argued that the parking issues extended out to the public parking area and were a continuous issue between the landlord and the other owner on the other side of the duplex.

The tenant's representatives also stated that they removed the stove in response to the notice of inspection and only did so to help facilitate the inspection. The tenant denies that the stove was left sitting in the rain or unprotected.

The landlord provided detailed documentary evidence of all the issues related to the use of the driveway and parking near the rental unit. This included the warning letters, caution notes and photographic evidence. The landlord also provided a copy of the municipal order to decommission the rental unit. The landlord acknowledged that the stove has been removed as part of the decommissioning of the rental unit. However, the evidence shows that the tenant requested that the stove be permanently removed as of April 10, 2009.

Analysis

In consideration of all the evidence before me, both written and oral, I accept the evidence of the landlord over the evidence of the tenant and her representatives. I found the landlord's evidence to be more consistent and thorough including a timeline of the specific events.

I am also satisfied that this dispute was escalated and aggravated by the manner and behaviour of the tenant's guests. I find that these individuals wilfully disregarded requests and written warnings about their inappropriate use of the driveway and the parking spots. I find the tenant's representative's oral testimony to be unreliable. I find that the majority of the requests brought forward by the tenant are an attempt by her representatives to retaliate personally against the landlord.

I deny the tenant's application for compensation due to loss of quiet enjoyment. I note that this was a fixed term lease which ended on February 29, 2009. At the end of that tenancy both parties allowed this tenancy to continue and revert into a month to month tenancy. I do not accept that the tenant had any significant issues or problems with the rental unit until recently as the issue with the parking escalated.

I do not accept the tenant's position that she was provided with a parking spot near the rental unit. I am persuaded that the tenant, who did not have a car, was told that guests could park up in the appropriate area on the street. I find that if a parking spot was to be provided it would have been explicitly included in the written tenancy agreement.

I accept that the tenant removed her stove on the date of the initial inspection, by the municipality, in an attempt to circumvent a finding that the rental unit did not meet municipal requirements. I also accept that following this inspection the tenant wrote the landlord requesting that the stove be removed. I find that the landlord, in accordance

with the *Act* and the municipal directions, gave the tenant appropriate notice that the rental unit would be decommissioned and that the removal of the stove was not required until May 31, 2009. As a result, the landlord is not responsible for reducing the tenant's rent for the loss of the stove when the tenant requested in writing that it be removed prior to May 31, 2009.

I find that the municipal order to decommission the rental unit is valid and therefore find that the one month Notice to End Tenancy is valid. I deny the tenant's application to set aside the notice. I grant the landlord an Order of Possession effective **two (2) days** after it is served upon the tenant. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

I dismiss the tenant's application. I have granted the landlord an Order of Possession based on a one month Notice to End Tenancy for cause.

Dated June 15, 2009.

Dispute Resolution Officer