

## **DECISION**

**Dispute Codes:** CNC, MNDC, ERP, LAT, LRE, MNDC, O, OLC, PSF and FF

### **Introduction**

This application was brought by the tenant seeking to have set aside a one-month Notice to End Tenancy for cause served on October 11, 2009. The tenant also sought a Monetary Order for reimbursement for repairs, orders for repairs and emergency repairs and landlord compliance with the *Act* and rental agreement, conditions on the landlords' right to enter, authorization and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the tenant is entitled to the various remedies and orders sought.

### **Background and Evidence**

This tenancy began on January 25, 2009. Rent is \$1,650 per month and the landlord holds a security deposit of \$825. The rental building is a side by side duplex and the landlords live in the other side.

Resolution of this dispute was challenged by the fact that each party stated the other had the only copy of the rental agreement which neither submitted and both parties submitted a substantial amount of late evidence.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served as the tenant had seriously jeopardized a lawful right of the landlord and had not done required repairs to the rental unit.

The parties both gave evidence that the tenant had formerly been in the employ of the landlord in a business unrelated to the rental unit. They stated that that relationship had deteriorated and the tenant believe the Notice to End Tenancy was in retaliation for matters related to the work relationship.

The landlord stated that such was not the case and that the notice had been served because the tenant had obstructed efforts to sell the property which was for sale when the tenancy began. More recently, the landlord stated that the tenant had first demanded numerous repairs yet denied her access to the rental unit after she had given due notice.

The landlord cited three instances in June of 1999 when her realtor had advised her that she had been denied access for showings, after having given due notice, on June 22, 2009 when the tenant cancelled because she had to work and could not arrange to remove her Bull Mastiff dog.

The realtor rebooked for the next day but was again rebuffed because the house was a mess. A viewing was cancelled on June 29<sup>th</sup> because the tenant stated the toilet had overflowed. The home was subsequently taken off the market, apparently due to the difficulty in arranging showings.

The parties gave evidence that the tenant had submitted a letter to the landlord on October 3, 2009 demanding various repairs, among others, and announcing that the landlords' request to enter the rental unit on October 5, 2009 was denied because they had given no satisfactory reason for the visit.

The landlord stated that this had been one of a number of such refusals.

The landlords wrote back to the tenant on October 5, 2009 addressing a number of the tenant's issues and also noting that they expected the refrigerator that had been placed in the garage be put back. The landlord stated that the tenant had removed the original fridge to substitute a much larger one that looked out of place and would hinder the efforts to sell the unit which was again being listed for sale.

The landlord stated that she had experienced such resistance from the tenant on her efforts to inspect the rental unit that she felt the need to engage the assistance of a police officer for the October 11, 2009 inspection.

The tenant had also presented demands that the fence gate be repaired, that the yard be fenced as promised at the beginning of the tenancy, that the front window be repaired, that elements in the stove be repaired, that lighting be installed in the rec room, venting be cleaned, a second smoke detector be installed, that furnace oil costs prior to November 1, 2009 be reimbursed, and that landlords property be removed from the lot.

## **Analysis**

Based on the evidence before me, I find that the tenant has jeopardized a lawful right of the landlord by way of frustrating the landlords' efforts to gain access to the rental unit to inspect the premises to evaluate needed repairs.

Landlords have a right to inspect their rental units with reasonable frequency and notice, and they have a duty to do so as evidenced by recent serious sanctions against landlords for activities of their tenants.

Although I accept the tenant's evidence with respect to the day the toilet flooded, I find that she also failed to cooperate with the landlords' efforts to market the property even though she was aware of their desire to sell it from the commencement of the tenancy.

Therefore, I decline to set aside the Notice to End Tenancy. In anticipation of that possibility, the landlord requested an Order of Possession as permitted by section 55(1) of the *Act* when a tenant's application to set aside is denied.

The landlord stated she would be satisfied with an Order effective December 31, 2009 in order to give the tenant ample time to find new accommodations.

As to the tenant's other claims, the landlord is of the view that the damage to the gate was caused by the tenant and the tenant should be responsible for the repair. The landlord denies promising a fully fenced yard. As the tenancy is ending, I find that it is not necessary that I order the gate repairs and, absent corroborating evidence, I can make no finding on the fence.

The landlord has promised to repair the window and is obtaining estimates to repair the furnace. I order that these repairs proceed.

I further order that the landlords consult with a local building inspector and/or fire inspector and ascertain for certain their obligation with respect to smoke detectors and conform to any direction they receive forthwith.

I do not find that circumstances warrant an order that the tenant change the locks or that the landlords access be limited beyond the limitations currently imposed by the *Act*.

As I find both parties have contributed to some degree to the creation of this dispute, I find that the parties should split the filing fee equally and that the tenant may recover her half by withholding \$25 from the next month's rent due following receipt of this decision.

## **Conclusion**

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on December 31, 2009.

The landlord is ordered to proceed with repairs to the furnace and window, and to hasten to make certain that smoke detectors conform to building and/or fire regulations.