

## **DECISION**

Dispute Codes      CNC OLD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a notice to end tenancy for cause, to obtain an Order to have the Landlord comply with the Act, and to recover the cost of the filing fee for this application from the Landlord.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on October 8, 2009. Mail receipt numbers were provided in the Tenant's verbal testimony. The Landlord is deemed to be served the hearing documents on October 13, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*. The Landlord confirmed receipt of the hearing package.

The Landlord, his wife, and the Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Tenant entitled to Orders under sections 47, 62, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed facts are that the verbal month to month tenancy began in March 2002. The current monthly rent is payable on the first of each month in the amount of \$450.00 and no security deposit was requested or paid to the Landlord.

The Landlord testified that the rental unit is a 5 bedroom two level home with three bedrooms on the main floor and two bedrooms and a recreation room on the lower level. The Landlord stated that there have been three to four tenants occupying the rental unit since 2002 and one of the tenants is the Landlord's son who lives in the rental home rent free.

The Landlord testified that a copy of his evidence was sent to the Landlord's son, via UPS, and the Landlord's son served the evidence to the Tenant on November 11, 2009. The Landlord argued that his son does not act as his agent and only assisted him in serving the Tenant with the Landlord's evidence.

The Landlord argued that at the onset of the Tenant's tenancy he entered into a verbal agreement with the Tenant whereby the Tenant would pay the Landlord monthly rent on a month to month tenancy, an amount determined by the Landlord independently from the other tenants, for the rental of a private bedroom and unrestricted use of the common areas which included the upper level kitchen, all bathrooms, living room, dining room, and lower level recreation room. The Landlord claimed that he told the Tenant at the onset of his tenancy that the Tenant would be responsible for finding replacement tenants when a tenant moves out.

The Tenant testified and confirmed that his rent was negotiated with the Landlord independently of the other tenants for a private bedroom and unrestricted use of the common areas and that his tenancy is separate from the other tenants. The Tenant argued that he never entered into a verbal agreement with the Landlord where the Tenant would be responsible for finding replacement tenants when someone moved out.

The Landlord testified that "once I assumed the responsibility to look for another tenant" the Tenant has been interfering with the Landlord's legal right to operate his business and to rent out space in the rental home so the Landlord issued the Tenant a 1 Month Notice to End Tenancy on September 18, 2009. The Landlord sent the notice to end

tenancy to his son who then served the Tenant with the notice in person on September 23, 2009.

The Landlord argued that the tenants were responsible to find a replacement roommate or cover the cost of the missing rent, after one of the tenants moved out. The Landlord attended a meeting with the Tenants in May 2009 where he advised the tenants that they either had to pay the increased rent amount or be evicted on July 31, 2009.

The Landlord testified that he began to do renovations in the rental house in May 2009 and he referred to his documentary evidence whereby he sent all of the tenant's e-mails informing them of the Landlord's intention to complete renovations.

The Landlord stated that he sent an e-mail to the Tenant requesting that the Tenant move out of his bedroom in the basement and move up to the empty room upstairs and that all three tenants move their possessions out of the spare bedroom in the basement.

When asked why he wanted the Tenant to move to the upper bedroom the Landlord testified that he was doing renovations in the recreation room in the basement and had intended on renting the lower level as a separate living area and that the Landlord felt it would be more desirable to prospective tenants for the larger space. The Landlord argued that the Tenant failed to respond to the Landlord's e-mail requests.

When asked why he did not advertise the upper bedroom the Landlord stated "it's uninhabitable". The Landlord argued that the upper bedroom was not ready to rent in its condition and that it would require maintenance and painting. When asked why he would expect the Tenant to move into an "un-inhabitable" room the Landlord stated that he would have the room painted before the Tenant moved into the room.

The Tenant testified and confirmed that he did not reply to the Landlord's e-mail because he had been sending the Landlord e-mails since June 2009 requesting a written tenancy agreement and/or written notices to end tenancy however the Landlord refused. The Tenant argued that since the other tenant moved out in May 2009 the

Landlord kept threatening to evict the remaining tenants if they did not agree to cover the cost of the missing tenant's rent. The Tenant stated that this increase would constitute a 33% rent increase.

The Landlord testified that it was "my lawful right to rent out any space in the rental unit" and the Tenant is interfering with this right. The Landlord argued that he was not increasing the tenants' rent and that they knew in advance that they would be responsible to find another tenant.

The Tenant testified and confirmed that the Landlord had been doing renovations in the rental house. The Tenant argued that towards the end of July 2009 the Landlord requested that all the tenants move their possessions out of the recreation room and into the empty bedroom located in the lower level so the Landlord could renovate the recreation room. The Tenant stated that the renovations in the recreation room are still not completed and the Landlord is requesting that the tenants move their possessions that were previously in the recreation room, out of the second bedroom storage, and into their own bedrooms.

The Tenant stated that he has been experiencing difficulty when trying to deal with the tenancy arrangements with the Landlord and has had to endure threats of eviction ever since the other tenant moved out in May 2009.

The Landlord confirmed that renovations in the recreation room began towards the end of July 2009 and as of today's date the repairs are still incomplete. The Landlord argued that he did not have enough laminate flooring to install in the recreation room and that the renovations have been put on hold until more flooring can be ordered in by the store.

The Landlord testified that he views the Tenant's e-mail communications and requests for written documents to be adversary and negative.

The Tenant testified that his right of access to the recreation room has been restricted since the end of July and that his right of quiet enjoyment of his tenancy has been affected by the Landlord's requests for more rent, for the tenants to find a new tenant, and the threats of eviction.

The Landlord confirmed that there was a "house meeting" held in May 2009 where the tenants were all asked to find another tenant or they would have to cover off the rent money of the tenant who had just moved out.

The Tenant is seeking an Order to have the Landlord comply with the Act by providing the Tenant with a written tenancy agreement, Order the Landlord to not terminate or restrict access to the use of common areas, and have the Landlord respect the Tenant's right for quiet enjoyment.

### Analysis

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced.

When determining the terms of verbal tenancy agreements I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Based on the testimony and evidence before me I find that the Landlord entered into individual tenancy agreements with each of the paying tenants, and that the tenants are "Tenants in Common." The *Residential Tenancy Policy Guideline # 13* provides that tenants in common have the same rights and obligations as an ordinary tenant with a separate tenancy and is not responsible for debts or damages relating to the other tenants' tenancy. In this case each tenancy agreement provided a private room for

each tenant and that each tenant had full, un-inhibited use of all common areas in the rental house.

Based on the evidence and testimony I find that the Landlord has contravened section 42 of the Act by attempting to increase the tenant's rent payments to cover the lost rent of the tenant who moved out of the rental unit on May 1, 2009. The onus lies with the Landlord to find replacement tenants when a tenant in common ends their tenancy. I caution the Landlord to ensure any future attempts to increase the Tenant's rent are done in accordance with the Act.

I note that the Landlord testified that he is the Landlord and that his son does not act as the Landlord's agent however the Landlord contradicted himself when providing testimony regarding how he had his son perform service of documents to the Tenant, on behalf of the Landlord, and how the Landlord's son keeps the Landlord informed as to actions of the other tenants in the rental house. I find that the Landlord's son is an occupant of the rental house, someone who does not pay rent as a tenant, and the Landlord's son acts as an Agent for the Landlord.

The Landlord issued the Tenant a 1 Month Notice to End Tenancy for reasons that the Tenant has significantly interfered with the Landlord and seriously jeopardized the lawful right of the landlord to rent out the space in the lower level of the rental house. The Landlord claimed that the reasons for issuing the 1 Month Notice to End Tenancy was because of two incidents:

- 1) The Tenant failed to respond to the Landlord's request to move out of the lower level bedroom and into the upper level bedroom; and
- 2) The Tenant has failed to remove all of his possession out of the storage bedroom.

In relation to issue one listed above, I note that the Landlord testified that the upper level bedroom was "un-inhabitable" and the Landlord could not advertise to rent this room, yet he was expecting an existing Tenant to move into the upper room.

In relation to issue number two listed above, I note that the Tenant's possessions were moved out of the recreation room and into the lower bedroom for temporary storage at the Landlord's request so the Landlord could conduct renovations.

Based on the evidence and testimony before me I find that the Landlord has failed to substantiate the reasons for issuing the 1 Month Notice to End Tenancy on September 18, 2009 and on a balance of probabilities one could conclude that the notice to end tenancy was issued in a retaliatory fashion against the only Tenant who requested, in writing, that the Landlord comply with the Act. I hereby cancel the 1 Month Notice to End Tenancy which was issued on September 18, 2009.

I note that while the Landlord is the owner of the rental property, at the moment he entered into tenancy agreement(s) with tenant(s), whether verbal or written, he gave exclusive occupation and possession of the rental property to the tenants and is subject to the obligations as set out in the *Residential Tenancy Act (Act)*.

The evidence supports that the Tenant has requested a written tenancy agreement with the Landlord and the Landlord has refused. Although this tenancy agreement was entered into prior to January 1, 2004, given the current circumstances of the tenancy and in the presence of the Tenant's request, I hereby Order the Landlord to list the existing conditions of the tenancy (without amending the pre-existing terms of the agreement) in a written tenancy agreement, with the content and format required under sections 12 and 13 of the Act.

The testimony and evidence before me supports the Landlord is attempting to change the Tenant's private accommodations and change the Tenant's access to common areas such as the lower bedrooms and recreation room. As noted above the Tenant's tenancy included one private room and full, unrestricted access to all of the common areas at the rental property.

In relation to the current restricted access of the recreation room, due to renovations, I note that the Landlord has already restricted the Tenant's access for over four months,

which I find is beyond a reasonable time to allow for renovations. The Landlord argued that he is awaiting the arrival of laminate flooring to match the flooring he previously purchased. I note that the Landlord testified that his supplier was having difficulty finding a matching floor product and the Landlord could not provide testimony as to when the floor would be expected to arrive.

I find that the Tenant has endured more than a usual period of restricted access to the recreation room for the pending renovations and I hereby Order the Landlord to have the renovations completed in the recreation room no later than December 12, 2009 at 9:00 p.m. If the Landlord is unable to obtain his first choice of flooring the Landlord will be required to purchase and install a different flooring to ensure the renovations are completed by the above mentioned date. In the event that the renovations to the recreation room are not completed by December 12, 2009 at 9:00 p.m. and full unrestricted access is not returned to the Tenant, then the Tenant would be at liberty to apply for compensation for the devaluation of his tenancy as per section 27 of the Act.

I must advise the Landlord that if he wishes to proceed with considering changing, terminating or restricting a service or facility he must do so in accordance with section 27 of the Act and that the Landlord must respect the Tenant's right to quiet enjoyment as provided under section 28 of the Act. If the Landlord fails to comply with either section 27 or 28 of the Act, as noted above, then the Tenant will be at liberty to seek compensation under the Act.

As the Tenant has been successful with his claim, I find that the Tenant is entitled to recover the \$50.00 filing fee from the Landlord for this application.

I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his obligations as set forth under the *Residential Tenancy Act*.

### Conclusion

The 1 Month Notice to End Tenancy issued on September 18, 2009 is **HEREBY CANCELLED and of No Force or Effect**.

**I HEREBY ORDER** the Landlord to issue a written tenancy agreement with the Act.

**I HEREBY ORDER** the Landlord to complete the renovations in the recreation room no later than December 12, 2009 at 9:00 p.m.

**I HEREBY ORDER** the Tenant to deduct the \$50.00 filing fee from his next rent payment to the Landlord, in full satisfaction of his monetary claim.

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: November 19, 2009.

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Dispute Resolution Officer