



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

FINAL DECISION

Dispute Codes

CNC, MNDC, OLC, FF

Introduction

This hearing was held in response to the tenant's Application requesting cancellation of a Notice to End Tenancy for Cause, a monetary Order for damages or loss; that the landlord be Ordered to comply with the Act and reimbursement of filing fee costs.

Preliminary Matter(s)

The portion of the tenant's Application requesting that the landlord comply with Act was scheduled to be heard at another scheduled hearing; therefore, it was not dealt with during this hearing.

The interim decision issued on February 9, 2010 indicted that, outside of photographs to be served by the tenant to the landlord, that no further evidence submissions would be considered. Each party made a number of submissions after the February 9, 2010 hearing, none of which will be considered.

Each party was informed that I will refer to evidence specifically referenced during the hearing. A large volume of evidence has been submitted and the tenant has included a number of small hand-written notes that are difficult to discern. This decision was issued based upon the evidence each party referenced and the testimony provided during the 2 hearing dates.

Issues to be Decided

Is the Notice to End Tenancy for Cause issued on December 30, 2009 valid?

Is the tenant entitled to a monetary Order in the sum of \$3,254.35 for damages or loss?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant has applied to cancel a 1 Month Notice to End Tenancy for Cause issued on December 30, 2009. The Notice was issued by the landlord, alleging the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant has also made the following monetary claim:

1 day vacation pay loss January 4, 2010	148.89
November 3, 2009 postage	10.35
October 27, 2009 postage	10.28
January 5, 2010 postage	8.44
February 8, 2010 postage	20.00
Total postage:	56.57
Photographs June 2009	34.00
Photographs January 1, 2010	7.29
Photographs January 21, 2010	7.60
Total photographs:	48.89
Claim for assault	3,000.00
Total claim:	3,254.35

Notice to End Tenancy:

This tenancy commenced in 2006.

The landlord presented testimony and evidence documenting a number of complaints related to this tenancy. The landlord provided evidence that problems with repeated telephone calls by the tenant to the landlord commenced in 2007, as the tenant was making constant demands that renovations take place in her rental unit. The landlord described these calls as harassing and disturbing to her and her mother.

The landlord provided written complaints from other occupants which allege the tenant has been confrontational in the laundry room. The landlord also provided evidence alleging that in May 2009 the tenant moved a television set from the storage room to her rental unit, without the consent of the owner of the television.

The landlord's evidence referenced an incident that occurred in June 2008 that resulted in a telephone call to the police.

Further incidents described by the landlord include a February 2009 telephone voice mail message left on the landlord's home phone from a male who identified himself as a lawyer for the tenant. This message was played during the hearing in which the male

threatens to place a lien on the landlord's property, threatens to give the landlord "a bad time" and swears at the landlord. The landlord stated she found this very upsetting, that she called this individual back but that he would not answer his phone.

Reports of excessive smoking by the tenant have caused other occupants to complain that smoke enters the hallways and their rental units. There have also been written reports by other occupants that post-date the Notice, alleging verbal altercations with the tenant in the laundry room.

The landlord asserts the tenant had been given numerous verbal requests to cease her repeated telephone calls to the landlord and to make all enquiries to the on-site property manager, not the property owner. Evidence submitted indicates that between 2007 and March 2008 the landlord issued written warnings to the tenant that she place all concerns to her in writing and that she cease making repeated telephone calls to the landlord. Written notices beyond March 2008 were made in relation to the storage room, parking and smoking.

The landlord has not issued a previous Notice to end the tenancy as the tenant had told her that she was suffering from cancer. The landlord felt that eviction of an ill tenant would be unfair. The landlord described at least twenty-one calls made to her by the tenant, over a 3 day period in December 2009.

During the reconvened hearing the landlord stated that the reason upon which the Notice was issued is based upon an incident alleged to have occurred on December 14, 2009. The landlord and tenant were engaged in an altercation in the locker room and the landlord alleges the tenant tried to grab her clothing.

The tenant denied anyone else was present; the landlord's property manager said that she was present and witnessed the tenant attempting to grab the landlord's clothing at her chest. The witness stated that when the tenant attempted to grab the landlord she took a step backward and told the tenant not to touch her. On December 30, 2009 the landlord issued the tenant a 1 Month Notice to End Tenancy for Cause for significant interference and disturbing the landlord.

The tenant acknowledged that there was a disagreement in the locker room, but denies threatening the landlord or touching her.

The landlord submitted a number of letters written by other occupants, complaining about the tenant. Some of these letters date back to 2008, some notes to the tenant outline rules in relation to entry to the locker room and the removal of a television set from the locker room by the tenant. In June and September 2007 and March 2008 the landlord issued 3 warning letters to the tenant in relation to repeated telephone calls made to the landlord's personal residence. In April 2007 the landlord directed the tenant to communicate in writing as her telephone calls were harassing in nature.

Tenants' Claim for Damages

The tenant submitted photographs in support of her claim for damages caused as the result of a physical altercation with the property manager on June 6, 2009. The landlord disputed this date and provided a police file number that indicated the incident occurred in 2008. The property manager and tenant each confirmed that late in the evening they engaged in a confrontation after the property manager went to the tenant's door to accuse the tenant of tampering with the landlord's laundry.

The witness N.B. testified that her unit was across the hall from the tenant's and that she overheard a loud discussion and that she could hear the property manager swearing. The witness could see the parties from the peep hole in her door. The witness stated that the property manager and tenant went down the hallway and entered the elevator, where the witness could hear the property manager screaming in the elevator, saying "stop, stop." The witness went downstairs and found the property manager crying. The witness saw that the property manager had been scratched.

The tenant submitted photographs that were taken of the tenant the next day, showing some bruising to the tenant. The tenant stated that she entered the elevator with the property manager, as she was going to another unit to talk to an occupant who had been in the laundry room and could vouch that the tenant had not tampered with laundry. The tenant alleged that the property manager had pushed all of the floor buttons and then held the tenant by the arms, pushed and bruised her as the elevator went up and down. The tenant is claiming damages in the sum of \$3,000.00 for emotional and physical stress as a result of an assault by the property manager.

The landlord had each party provide a written report and then contacted the police; who told the landlord to have the individuals shake hands.

The tenant has submitted receipts for postage and photograph developing costs. The tenant is also claiming costs for lost vacation time.

Analysis

Notice to End Tenancy:

During the hearing held on March 26, 2010, the landlord confirmed that the Notice to End Tenancy was issued based upon the incident that occurred on December 14, 2009.

I find that the December 14, 2009, incident which occurred in the locker room does not form the basis for eviction of the tenant. I base this decision on the conflicting testimony of the parties and have considered the relationship between the parties; which is contentious. I find that the December 14, 2009 incident demonstrates the level of animosity between the parties that has developed over the duration of this tenancy, but

that this fails to support reasons to end the tenancy. The tenant denied that the property manager was present and I find, on the balance of probabilities, that I am not convinced that the property manager witnessed the alleged altercation. Even if the property manager did see the tenant attempt to grab at the landlord, I find that the relationship between the landlord and tenant is so negative, as to cause me to question both parties version of events.

In relation to the allegation regarding smoking, the tenancy agreement does not prohibit the tenant from smoking. Therefore, the landlord is at liberty to inspect the door to the tenant's suite and to install any moulding or other material that will serve as a barrier to smoke entering the hallways. As the tenant is allowed to smoke, I find that smoking, as allowed under the terms of the tenancy agreement, may not serve as a reason to evict the tenant.

The landlord has testified to a number of disturbances caused by the tenant throughout the tenancy; all of which are contributing to a poor relationship between the parties. The landlord has issued warning notices in the past, but has failed to act on those written warnings, as she believed the tenant was ill. There is no doubt that the tenant has been disruptive, however, the landlord is responsible for investigating allegations, providing the tenant with timely, appropriate warning of any breach of the Act or tenancy agreement and then taking timely action related to those warnings.

The failure of the landlord to take decisive action in the past has likely contributed to the current discord. Repeated threats of action that were not followed up by the landlord could have caused the tenant to believe that the direction given by the landlord was of no consequence.

The tenant must use this decision as a warning that she has been previously given notice that all communication with the landlord must be in writing. Any continued telephone calls to the landlord could form the basis for further action by the landlord under the Act. The tenant must understand that even repeated written communication could be determined to be harassing if it is unfounded and not given for a reasonable purpose. The tenant should communicate with the agent of the landlord, as assigned by the landlord and by the means requested by the landlord.

The tenant must also use this decision as a warning that her behaviour must not be threatening and should at all times be respectful of the landlord and other tenants. This expectation extends to the landlord, who, rather than confronting the tenant at her door, should consider issuing written notices of any breach of the tenancy agreement or Act.

I strongly urge the landlord to provide the tenant with written notice of any concerns that have been investigated and deemed founded. If the tenant is found to be breaching the requirements of the tenancy agreement or Act, written notice to the tenant should contain specific information, behaviours expected and possible outcomes if the behaviour fails to cease. Action taken in relation to concerns that are not addressed should then be timely and occur as outlined in the written warning.

The tenant wishes to remain in her rental unit; however, if the conflict between the parties continues and if the tenant fails to ensure that the landlord and other occupants are not unreasonably disturbed, this tenancy could end. I urge the tenant and landlord to consider the need for timely communication that is made in a respectful and professional manner.

Therefore, I find that the 1 Month Notice to End Tenancy issued on December 20, 2009 is cancelled and of no force or effect.

Tenant's Claim for Damages

From the evidence before me I find, based upon the police file number issued at the time that the incident described by the tenant occurred in June 2008. This incident is dated and no action in relation to the tenancy was taken by either party at the time. I find that this altercation, which occurred almost 2 years ago, was, in part, initiated by the property manager who attended at the tenant's door late in the evening, making allegations against the tenant.

Given the level of animosity between the parties, this kind of accusation might have been expected to result in a negative encounter and I find it is likely that each played a role in the altercation that then ensued. The tenant followed the property manager down the hall and entered the elevator; however, I find that the property manager's presence at the door, the accusation and swearing would have contributed to a tense situation.

I find that there is no evidence before me that the incident that occurred in June 2008 was the fault of the property manager, any more than it was of the tenant. There is no evidence before me that convinces me that the property manager assaulted the tenant, any more than the possibility that the tenant assaulted the property manager. It appears that the incident was instigated by allegations made, which escalated into an altercation where both parties are claiming damage by the other. Therefore, in relation to the tenant's claim for damages I find that the tenant has failed to prove, on the balance of probabilities, that the altercation that occurred in June 2008 was the result solely of the landlord's actions and that the tenant's claim for damages is dismissed.

As the tenant's claim for damages is dismissed, I find that all other costs for photographs and loss of vacation pay is dismissed.

As the tenant's Application has partial merit I find that the tenant is entitled to filing fee costs and may deduct \$50.00 for the next months rent owed.

A copy of the *Guide for Landlords and Tenants in British Columbia* is enclosed for reference by each party.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued on December 30, 2009 is cancelled and of no force or effect. This tenancy shall continue until it is ended as provided by the Act.

The tenant's claim for damages is dismissed.

The tenant is entitled to filing fee costs and may deduct \$50.00 from the next months rent owed.

The matter related to the landlord's failure to comply with the Act was not heard. The tenant's Application indicated that she had another hearing scheduled for those matters.

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: March 31, 2010.

Dispute Resolution Officer