

DECISION

Dispute Codes: CNC, MNDC, LA, RR and FF

Introduction

This application was brought by the tenants seeking to have set aside a Notice to End Tenancy for cause served on January 26, 2010 and setting an end of tenancy date of February 28, 2010.

The tenants also seek a monetary compensation for the cost of emergency repairs, damage or loss under the legislation or rental agreement, a rent reduction for loss of services or facilities, authorization to change locks, 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 tenants are entitled to the monetary compensation claimed and in what amount, and whether orders for repairs remain necessary.

Background and Evidence

This tenancy began on November 15, 2008. Rent is \$900 and the landlord holds a security deposit of \$450.

Notice to End Tenancy

At the commencement of the hearing, the landlord requested an Order of Possession if the Notice to End Tenancy was upheld,

The landlord gave evidence that the Notice to End has been issued following an altercation on January 26, 2010 between the male tenant and a male guest who had been visiting her. According to the landlord, she was entertaining guests when she heard a horn honk, followed by a loud pounding on her door. She stated that she replied that she would answer in just a minute. She said that as her male guest, a 68 year old man was leaving, he asked the tenant who was by his truck what his problem was. She said the tenant then approached her guest and struck a blow and a struggle ensued. Subsequently, she said, the tenant said to her, "That's it you f....n bitch, you're going down," which she took to be a threat. She said she reported the matter to police who urged her to have no contact with the tenant and to seek an eviction. The landlord's version was verified by the wife of the guest in question.

By the tenant's accounting, verified by his wife, he had come home and the guests' vehicle was blocking his way to his parking spot. He first honked, then pounded on the door. He said the male guest opened the door and struck him, starting the altercation. He said that he had not used profanity with the landlord and did not threaten her. He said that he, too, had called police.

Analysis of Notice to End Tenancy

While I tend to find the evidence of the landlord the more credible, irrespective of who struck the first blow, I find that the tenant's aggressive approach precipitated the altercation by the honking, and by his own words, "pounding" on the landlord's door.

Therefore, I find that the tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and jeopardized the safety or a lawful right or interest of the landlord..." in breach of section 47(1)(d) of the *Act*.

Therefore, I decline to set aside the Notice to End Tenancy and on that determination, grant the landlord with an Order of Possession to take effect at 1 p.m. on April 30, 2010 as per her request under section 55(1)(a) of the *Act*.

Tenants' Monetary Claims

In their application, the tenants sought the following monetary compensation and I find as follows:

Reduction in yard size - \$250. The tenants stated that early in the tenancy, the size of their usable yard had been reduced due to a sub dividing of the rental property. The landlord stated that the yard had been staked at the commencement of the tenancy and the tenants were aware that there would be a reduction. With diametrically opposed evidence and given that this matter is raised 15 months after the fact, I find that the benefit of the doubt should go to the landlord and dismiss this claim.

Storage of evicted tenants' belongings - \$100. The tenants claim that when a former downstairs tenant had been evicted, some of his belongings had been left in a parking spot assigned to them for a few days. In order to protect them from the elements, they brought the materials inside and stored them for the former tenant and make this claim for compensation. I must find that, while it was an act of kindness and consideration on their part, they cannot attribute their loss of use of the storage space to the landlord. This part of the claim is dismissed.

Continued harassment by the landlord for three months - \$600. Having heard the reasons of the tenants, I must conclude that the events described by them might constitute minor annoyance, but I do not believe a case for harassment has been proven. Part of this claim, I believe falls on the landlord's proposals to create a new tenancy agreement after she moved into the basement suite in November of 2009. I understand that some proposals might be seen to reduce facilities, such as the changes to laundry room having, but I cannot find harassment. This claim is dismissed.

Continued harassment/illegal entry from beginning of tenancy - \$600. Part of this claim rests on behaviours attributed to a former co-landlord who has since been hospitalized with dementia. Again, given that this claim is brought so long after the fact, and while I appreciate that it may have diminished the tenants' enjoyment of the property, I cannot find that it constitutes harassment.

Loss of user of portion of the basement - \$600. The tenants make claim that the landlords stored materials in the basement of the home, causing them to lose one-quarter of the space that should have been theirs. I find that the tenants should be compensation for this loss of space for a total of **\$100.**

Compensation for illegal entry by the landlord - \$150. The landlord conceded one incidence of illegal entry to the rental unit for which she offered apology. The tenants claim intrusions were more numerous. I find that there is insufficient clear evidence to support this claim and it is dismissed.

Failure to carry out necessary repairs to the wood stove - \$50. I find that the landlord was aware of the need for repairs and that the tenants are entitled to the compensation claimed in the amount of \$50.

Asbestos in the basement and Ureaformaldehyde in walls. The tenants claim the landlord was aware of hazardous materials in the basement and walls. The landlord had had an inspection done which showed negligible asbestos in the walls. In the absence of a demand letter to the landlord and concrete evidence of such materials in a deleterious quantity, I make no award on this part of the claims.

Scratches on the tenants' van - \$600 deductible. The tenants claim that workers engaged by the landlord had scratched their van on both sides. I am uncertain as to jurisdiction on this claim but in the absence of any witness who saw the landlord's agents do such damage, I must dismiss this part of the claim.

In summary, I find that the landlord owes to the tenants an amount calculated as follows:

Loss of use of basement	\$100.00
Failure to repair woodstove	50.00
TOTAL	\$150.00

Conclusion

The landlord's 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 April 30, 2010.

The tenants' copy of this decision is accompanied by a Monetary Order for \$150, enforceable through the Provincial Court of British Columbia, for service on the landlord.

As the tenancy is ending, I find the tenants' request for authorization to change locks and do repairs to be unnecessary and the matter of a rent reduction to be moot.

March 31, 2010