

DECISION

Dispute Codes OPE, OPR, MND, MNR, ET, CNL, MNR, MNDC, RPP, LRE, OPT, LAT, AS, RR, FF

Introduction

This hearing was convened by way of conference call to deal with the cross applications of the landlords and the tenants.

The landlords have applied for an Order of Possession due to employment with the landlord ending and because the tenant has not paid rent or utilities; for a monetary order for damage to the unit, site or property, and for unpaid rent or utilities, and to end the tenancy early and obtain an Order of Possession.

The tenants have applied for an order cancelling the notice to end tenancy; for a monetary order for the cost of emergency repairs and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord return the tenant's personal property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an Order of Possession; for an order authorizing the tenants to change the locks to the rental unit; for an order permitting the tenants to assign or sublet because the landlord's permission has been unreasonably withheld; for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

- Are the landlords entitled to an Order of Possession due to employment with the landlord ending?

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to an order ending the tenancy early?
- Are the tenants entitled to an order cancelling the notice to end tenancy?
- Are the tenants entitled to a monetary order for the cost of emergency repairs?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Are the tenants entitled to an order that the landlord return the tenant's personal property?
- Are the tenants entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- Are the tenants entitled to an Order of Possession?
- Are the tenants entitled to an order authorizing the tenants to change the locks on the rental unit?
- Are the tenants entitled to an order permitting the tenants to assign or sublet because the landlord's permission has been unreasonably withheld?
- Are the tenants entitled to an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This month-to-month tenancy began about 2 years ago, and the tenants still reside in the house. The male tenant testified that his grandfather had owned the house with the tenant's mother and her 2 siblings. In April, 2009, after the grandfather had passed away, one of the siblings bought out the other siblings and became the landlord. Presently residing in the house are the male tenant, his mother, common law wife and daughter.

Each of the adult tenants pay rent individually; the male tenant pays \$400, his mother pays \$500.00 and the common law wife of the tenant pays \$100.00 per month, for a total of \$1,000.00 per month. No security deposit was paid.

The landlord testified that he issued a notice to end tenancy because an agreement was made with the male tenant that he would finish the landlord's kitchen for free rent. The tenant has cancer, and was to receive free rent for 3 months or so. No evidence was provided as to when the agreement was to take effect, or when it was to end. The landlord testified that he has not paid rent for the last 10 months, but the other tenants have.

Evidence provided in advance of the hearing shows that on March 23, 2010 the landlord issued a 1 Month Notice to End Tenancy for Cause citing the following reasons:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site
- Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee

The landlord testified that the tenants are not caring for the property; a rose bush was cut down and mildew is growing on the deck. He also testified that the tenants will not allow him to inspect the house upon giving 24 hours notice. He posted a notice, a copy of which was provided in advance of the hearing, stating that he would be doing an inspection on April 18, 2010 but when he attended no one would answer the door.

The male tenant testified that the landlord walks into the house without knocking and without announcement or notice. His mother is a stroke victim who requires care and has some memory loss. The parties are all family, and the landlord testified that the tenants walk into his house without knocking as well.

The parties provided copies of Facebook messages criticising each other which were of no use or value to this dispute or the hearing.

Analysis

I find that a tenancy does exist, although not in written form. This is obviously a family dispute that is more deeply rooted than a landlord and tenant dispute which cannot be rectified under the *Residential Tenancy Act*. I have no evidence before me of what rent was paid, unpaid or traded for work. I have no evidence of illegal activity, no evidence that the tenants are repeatedly late paying rent, no evidence of jeopardizing health or safety of the landlord, no evidence of extraordinary damage, no evidence that the rental house is part of an employment arrangement or that the house is needed for a new employee, no evidence that the tenant should be permitted a reduced rent for repairs agreed upon but not provided.

Conclusion

The notice to end tenancy is hereby cancelled.

The landlord's application is dismissed in its entirety.

I order that the tenants pay rent on the 1st day of each month in the amount of \$1,000.00. Failure to do so may result in being served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant's application is dismissed in its entirety.

I order that the landlord provide receipts for every rent payment made.

I order that the landlord provide at least 24 hours written notice before attending at the house. That notice must include the purpose for entering, which must be reasonable, the date and time of the entry, which must be between 8 a.m. and 9 p.m.

I order that the tenants permit the landlord to enter the house upon giving the appropriate notice, which can be every 30 days, pursuant to Section 29 (2) of the *Residential Tenancy Act*.

Since neither party has been successful with their claim, I decline to award the filing fee in favour of either party.

I would strongly recommend that the parties enter into a proper written tenancy agreement, and complete a condition inspection report to prevent any further deterioration of the landlord/tenant relationship and the family relationship of all of the parties.

With this decision, I am enclosing a booklet entitled, "A Guide for Landlords and Tenants in British Columbia" to assist the parties with the requirements and rights of the parties under the *Residential Tenancy Act*.

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: May 18, 2010.

Dispute Resolution Officer