

## **Decision**

**Dispute Codes:** CNC, MNR, MNDC, OLC, RP, AS, FF, O

### **Introduction**

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* for orders as follows:

1. Cancellation of a Notice to End Tenancy for Cause pursuant to section 47.
2. A monetary order for reimbursement of the cost of emergency repairs pursuant to section 67.
3. A monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.
4. An order to the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.
5. An order to make repairs to the unit, site or property pursuant to section 32.
6. An order to be allowed to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.
7. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. The tenants provided evidence that their application for dispute resolution was served to the landlord by registered mail on May 19, 2010. The tenants testified that the landlord personally served them with a notice to end their tenancy for Unit #1 by May 26, 2010. The tenants stated that the landlord's service of this document did not occur on April 24, 2010, as maintained in the landlord's note and by the landlord's counsel. The tenants testified that they received the landlord's notice a few days after April 24, 2010 under their door. As there is no dispute that the landlord's notice was received by the tenants, I have considered the tenants served with the landlord's notice to vacate by May 26, 2010. The landlord's counsel confirmed that the tenants' application for dispute resolution was received by the landlord.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **Issue(s) to be Decided**

Whether the tenants' application to cancel the landlord's notice to end tenancy should be granted.

Whether the tenants are entitled to monetary orders for repairs to the landlord's building and money owed to the tenants by the landlord.

Whether the landlord has unreasonably withheld permission to assign or sublet the rental premises.

Whether the tenants are entitled to an order that the landlord comply with the Act.

Whether the tenants are entitled to recovery of the filing fee for this application.

### **Background and Evidence**

The tenants have been occupying Units # 1 and #9 of the property, but have not been paying rent to the landlord. The tenants testified that they have been staying in these premises on the basis of an oral tenancy agreement with the landlord in exchange for work that they have performed to refurbish the property. The tenants stated that they vacated Unit #9, as requested by the landlord on April 22, 2010, but remain in Unit #1.

The tenants applied for a cancellation of the landlord's notice to end their tenancy.

They maintained that the landlord's notice was not properly served to them and did not constitute a legal notice to end their tenancy.

The tenants' application for a monetary order was based on renovations they stated they undertook for the landlord on Unit #1, where they continue to live. These renovations include what they described as a total renovation to Unit #1, including the installation of a new kitchen, renovated living room, floors, walls and plumbing. The

tenants testified that the landlord owed the tenant's numbered Alberta company \$24,999.00 for undertaking these renovations.

The tenants did not submit any details, invoices or receipts regarding the \$24,999.00 amount they were requesting as a monetary order. Their only written evidence was the landlord's notice to end tenancy and two letters to the Victoria Police Department, describing a confrontation that took place between the male tenant and the landlord on April 22, 2010.

The tenants testified that their request to be allowed to sublet Unit #1 was designed to recover their costs associated with the work they performed on the landlord's property. They said that they have not made any written request to the landlord for consideration of a potential sublease or assignment of Unit #1 to someone else.

The landlord's counsel noted that the tenants have been staying on the premises without paying rent because the elderly landlord wanted to help them out. There was no written tenancy agreement in place. She said that the landlord was concerned about his safety as a result of the April 22, 2010 altercation in which the male tenant and the landlord were involved in a physical incident.

The landlord's counsel testified that the tenant's company was not registered in British Columbia, and the company no longer appears to be registered in Alberta.

## **Analysis**

### **Application to Cancel the Landlord's Notice to End Tenancy**

Based on the evidence presented, it would appear that the landlord's April 24, 2010 notice was provided under section 47 of the *Act*, which reads in part as follows:

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

*(d) the tenant or a person permitted on the residential property by the tenant has*

- (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, ...*
- (e) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that...*
  - (ii) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,...*

This section of the *Act* permits a landlord to end the tenancy on a date that is not earlier than one month after the date the notice is received. The landlord's counsel noted that the landlord's April 24, 2010 notice did provide more than one month to the tenants to vacate Unit #1 of the rental property.

However, subsection 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]." Section 52 of the *Act* reads as follows:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form...*

Subsection 47(4) of the *Act* gives the tenant an opportunity to dispute a notice to end tenancy under this section of the *Act* within 10 days of receiving the landlord's notice. If the tenant does make an application under subsection 47(4) within 10 days, the tenant is presumed to have accepted that the tenancy ends on the effective date of the application.

The standard form available from the Residential Tenancy Branch and on its website meets all of the requirements of section 52 of the *Act*, and hence subsection 47(3).

I find that the landlord's April 24, 2010 handwritten notice to end tenancy does not meet key requirements of these sections of the *Act*. The landlord's notice letter provides no clear statement of the grounds for ending the tenancy, as required under subsection 52(d) of the *Act*. In addition to the safety concerns that seem to form the primary basis for the landlord's notice, the landlord's counsel also raised concerns about the tenants' non-payment of rent, the terms of whatever oral agreement is in place that permitted the tenants to occupy the premises, and whether the tenants were "live-in contractors." Part 4 of the *Act* provides different deadlines to the tenant to submit an application for dispute resolution to cancel the landlord's notice to end the tenancy. The landlord's April 24, 2010 notification to the tenants did not specify the grounds for the landlord's notice, nor did it identify the number of days that the tenants had to submit an application for dispute resolution if they chose to challenge the landlord's notice. These are important features of the standard forms available to landlords from the Residential Tenancy Branch. As the landlord failed to include this and other standard information to the tenants in the April 24, 2010 notice, I am unable to find that the landlord's notice was in the approved form.

For the reasons stated above, I allow the tenants' application to cancel the notice to end tenancy. I set aside the landlord's notice to end tenancy with the effect that the tenancy for Unit #1 shall continue.

I have not made a finding regarding the method of service of the Landlord's Notice to End Tenancy because I have not found that the landlord's April 24, 2010 notice to the tenants complied with the requirements of the *Act*.

### **Tenants' Application for a Monetary Order**

Most of the tenants' other applications narrow to their assertion that the landlord owes them for renovation work to the property. There is undisputed evidence that the tenants have paid no rent while staying on the premises. The tenants also testified that they had nothing in writing from the landlord to substantiate their claim that the landlord

agreed to let them occupy the premises at no cost and that the landlord committed to pay them for the renovations they were doing to the property.

The evidence from both parties confirmed that the work performed on the property had been billed by one of the tenant's numbered Alberta company to the landlord. The tenants testified that there were receipts and invoices that had been provided to the landlord as part of their ongoing efforts to resolve the commercial dispute between one of the tenant's companies and the landlord. Although these were clearly available to the tenants before this hearing, they did not submit these records as evidence for consideration in this hearing.

As there is insufficient evidence to substantiate the tenants' claim for a monetary order, I deny their application for a monetary award. Any claim that the tenants' company might have would fall outside the scope of my mandate under the *Residential Tenancy Act*. Disputes regarding work done by contractors for landlords do not fall within the *Residential Tenancy Act*.

### **Tenants' Request to be Allowed to Assign or Sublet the Rental Premises**

The only circumstances under which a landlord can be compelled to permit an assignment or sublet is if there is a fixed term tenancy agreement in place. Since no such agreement is in place, there is no basis for the tenants' claim that the landlord be required to allow them to assign or sublet these premises.

### **Filing Fee**

Both parties agreed that the tenants had not been paying rent for these premises. While the tenants' application for cancellation of the notice to end tenancy has been granted, their other applications for monetary awards have been denied. As the tenants were only partially successful in their application, I deny the claim for recovery of the filing fee.

## **Conclusion**

The tenants' application to cancel the landlord's notice to end tenancy is allowed. The Notice to End Tenancy for Cause is set aside with the effect that the tenancy for Unit #1 shall continue.

I dismiss the tenants' application for a monetary order, for an order that the landlord has unreasonably withheld permission to let them sublet or reassign their premises. I find that the tenants have not proven that the landlord has failed to comply with the Act and requires an order to do so. I find that the tenants have not provided sufficient evidence to prove that repairs to the rental unit are required.

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*.