DECISION

Dispute Codes CNL, MNDC, OLC, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, a monetary order, an order that the landlord comply with the Act and perform repairs and an order permitting the tenant to reduce his rent until repairs are completed. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the tenant entitled to a monetary order as claimed?
Should the landlord be ordered to comply with the Act and perform repairs?
Should the tenant be permitted to reduce his rent until repairs are completed?

Background and Evidence

The parties agreed that the tenant has lived in the rental unit for approximately 7 years. In 2004 the landlord purchased the residential property and on or about August 18, 2004 the parties entered into a new tenancy agreement. The rental unit is in the back half of a home in which the front half is a separate unit (the "Front Unit"). The Front Unit was occupied by V.S. until early 2008, by R. for several months in 2008, by D.K. for an unspecified period and by K.L. from April – June 2010.

On April 1, 2010 the landlord served on the tenant a 2 month notice to end tenancy which stated that the landlord or a close family member intended to occupy the unit and the unit would be renovated in a manner that required it to be vacant. The landlord testified that the Front Unit and the rental unit were at one time a single dwelling and the landlord intended to again create a single dwelling by combining the two units into a two bedroom, 2 bath unit. The landlord provided a letter from his son, M.S., in which M.S.

stated that he intended to reside in the unit. The tenant questioned the good faith of the landlord and testified that there were many occasions in which the landlord had threatened to evict the tenant because the tenant complained about a lack of cable service and the tenant refused to move vehicles from the driveway, among other things. The tenant produced a witness, B.K., who testified that he heard the landlord threaten to evict the tenant if he didn't move his motor home. The landlord submitted evidence showing that the Front Unit was rented for a short term tenancy in order to ensure that both units were vacant for July, which was the month in which he planned to renovate the units. The landlord testified that he has already spent over $1,500.00 and 120 hours of labour renovating the Front Unit and provided evidence to show the nature of the work which was performed in that unit.

The tenant testified that he has had a rodent problem in the unit throughout the tenancy and that the landlord had not responded to his request for repairs other than occasionally reimbursing him for rat poison. The tenant entered into evidence photographs showing dead mice and mouse droppings in the unit. The landlord testified that although he had occasionally reimbursed the tenant for rat poison, until he received the tenant's application for dispute resolution he was unaware that there was a rodent infestation in the unit. The tenant produced a witness, D.K., who lived in the Front Unit for a period of time. D.K. testified that there was a rodent problem but testified that she did not complain to the landlord about the problem as she was understanding that she should bring such issues to the attention of the tenant. The tenant seeks to recover monies spent on rat poison and entered into evidence a receipt showing that in 2005 he spent $8.10 on rat poison which he claims has not yet been reimbursed.

The parties agreed that the tenant is entitled to the equivalent of one month's rent pursuant to section 51 of the Act which was triggered when the landlord served the 2 month notice to end tenancy. The parties further agreed that the tenant was entitled to be reimbursed for 4 months in which he paid for his own cable service at a rate of $45.18 per month.

The tenant testified that in early 2008 the landlord asked the tenant to increase his rental payment, retroactive to January 2008. The parties entered into a verbal agreement whereby the tenant would make repairs to the deck in exchange for not having to pay a rent increase for that year. The tenant testified that in January 2009 the landlord verbally asked him to begin paying $25.00 per month more in rent, which the tenant did. The tenant seeks to recover the additional rental payment and characterized the rent increase as illegal. The landlord testified that he gave the tenant a 3 month notice of rent increase on the approved form but did not submit a copy of that form into evidence. The landlord took the position that because the tenant paid the rent increase, he agreed to it.

The tenant seeks to recover $11.99 spent to repair a screen in the rental unit and entered into evidence a receipt showing that he had spent this amount in May 2010. The landlord took no position on whether the tenant was entitled to reimbursement for this expense.

The tenant seeks an award for loss of quiet enjoyment of the rental unit. The tenant testified that he has had to do repairs around the unit throughout the tenancy, that the patio door has not been functioning properly for several years, that the oven did not work throughout the tenancy until the landlord replaced it in June and that the landlord expected the tenant to maintain the entire yard area. The tenant further testified that he had always had exclusive use of the laundry until Rob's tenancy began in the front unit at which time the landlord advised the tenant that he had to give Rob access to the washer and dryer which are located in the rental unit. The landlord testified that the tenant did not bring repair issues to his attention and that he was unaware of some issues until he received the application for dispute resolution. The landlord further testified that the tenant had told him that he loved yard work and that the landlord should not worry about yard maintenance.

Analysis

Sections 49(3) and 49(6)(b) of the Act, pursuant to which the notice to end tenancy was issued, provide as follows:

> 49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
>
> 49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
>
> 49(6)(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

For the issue of occupying the unit, the landlord must show that he or a close family member intends in good faith to occupy the unit.

For the issue of renovation, the landlord must show that that (a) he has all the necessary permits and approvals required by law; (b) he intends in good faith to renovate; and (c) the intended renovations require the rental unit to be vacant.

With respect to the renovations, the landlord testified that no permits are required to undertake the renovations. The tenant appeared to accept that permits were not required. The landlord testified that all he will have to do to combine the Front Unit with the back is open two doors between the units and remove the kitchen from the rental unit. I find that the changes proposed by the landlord are minimal and while I accept that permits are not required, I am not satisfied that the renovations cannot be accomplished while the tenant remains in the unit. However, it is clear that if the landlord proceeds with combining the two units into one, the rental unit as an independent unit will cease to exist. Because the purpose of the renovations is to change the character of the suite rendering it unsuitable for use as a private residence, I find that the renovations are secondary to and dependent upon the suite being occupied by the landlord or a close family member.

The tenant did not appear to question whether the landlord's son intended to move into the rental unit, but argued that the landlord did not meet the good faith requirement established by the Act. I accept the landlord's evidence that his son intends to occupy

the rental unit and I find that the landlord's son meets the definition of "close family member" under section 49(1) of the Act.

The tenant alleged that the landlord had an ulterior and dishonest motive in issuing the notice to end tenancy, calling into question the landlord's good faith. Specifically, the tenant alleged that the landlord wished to end the tenancy because the tenant was complaining and would not comply with the landlord's demands. Because the tenant raised the issue of good faith, I am required to consider the alleged existence of a dishonest motive pursuant to Taylor J.'s decision in *Gallupe v. Birch* [1998] B.C.J. No. 1023.

The British Columbia Çourt of Appeal addressed the issue of good faith in this context in *Semeniuk* v. *White Oak Stables* (1991) 56 BCLR (2d) 371 (C.A.). In that decision, the Court held at p. 276 "that the landlord must truly intend to do what it says, and that it must not be guilty of dishonesty, deception or pretence."

Residential Tenancy Policy Guideline #2 discusses the good faith requirement and articulates a two part test:

> First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

While it may be true that the landlord has threatened to evict the tenant on occasion, I am unable to find that the landlord's *primary* motive was to have the tenant vacate the rental unit. The landlord has already undertaken renovations in the Front Unit which would not have been necessary had the landlord not intended to install his son in the residence. I accept the landlord's testimony that his son intends to live in the unit and eventually purchase it. I find a good deal of common sense in the landlord's position that his 20 year old son will be able to live in what will become a two-bedroom residence with a roommate and save enough to eventually purchase the property. While the relationship between the parties has clearly deteriorated over the years and the landlord

may see evicting the tenant as a benefit, I am unable to find that ending the tenancy is the primary motive. I find that the landlord has met the good faith requirement.

I find that the landlord has established grounds to end the tenancy on the basis that his son intends to occupy the rental unit. I further find that after the renovations, the rental unit as an independent living area will cease to exist. I therefore decline to set aside the notice and dismiss the tenant's claim.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. I find it appropriate to end the tenancy on July 31, 2010.

I find that the tenant is entitled to receive the equivalent of one month's rent in compensation for having been served with the 2 month notice to end tenancy. The tenant may recover this compensation by withholding his rent for the month of July 2010.

The parties agreed that the tenant was entitled to recover 4 months of cable payments. I award the tenant $180.72.

I dismiss the tenant's claim for the cost of rat poison as the receipt which was submitted by the tenant is dated in 2005 and I find that the delay in making this claim has prevented the landlord from determining whether the tenant has already been compensated for this purchase.

I accept that the screen required repair and I find that the tenant is entitled to recover the cost of that repair. I award the tenant $11.99.

The landlord bears the burden of proving that the rent increase implemented in January 2009 was implemented in accordance with the Act. Despite having been served with

the tenant's claim in which the tenant advised that he would seek recovery of overpaid rent, the landlord did not provide a copy of the rent increase form he claims to have served. I find that the landlord has not met the burden of proving that he legally increased the rent. I reject the landlord's argument that the tenant agreed to the rent increase by paying the increase and find that the tenant was unaware of his rights at the time the increase was implemented. I award the tenant $450.00 which represents $25.00 per month overpayment of rent for the period from January 2009 – June 2010 inclusive.

Turning to the claim for loss of quiet enjoyment, I find that the tenant has failed to prove that he advised the landlord of most of the problems with the rental unit. It is clear that the tenant discussed a problem with rodents as the landlord reimbursed him on several occasions for poison purchased by the tenant. However, I find that the landlord may well have been led to believe that providing poison was the only remedy required by the tenant. The tenant performed yard maintenance without complaint throughout the tenancy which leads me to accept the landlord's testimony that the tenant wished to do the yard maintenance. The only grounds on which I find the tenant to have established a basis for compensation for loss of quiet enjoyment is the issue of sharing the laundry. The landlord did not dispute that the washer and dryer are located in the rental unit and that anyone who wishes to use those machines must first access the rental unit. I find that requiring the tenant to open his rental unit to other tenants to use the machines violated his right to quiet enjoyment. I find that an award of $300.00 will adequately compensate the tenant for 2 years of sharing the laundry facilities and I award the tenant that sum.

I find the tenant is entitled to recover the $50.00 filing fee paid to bring his application.

I note that the tenant's agent argued that the doctrine of unclean hands should be applied as the landlord had a number of unenforceable terms in the tenancy agreement and as he alleged the landlord had not acted in good faith. The doctrine of unclean hands is an equitable defence which provides that those who seek equity must do equity. In this case, the tenant is the plaintiff and is the party seeking relief. I find that

the doctrine is not applicable. The tenant's agent further referred me to *Hedley Byrne & Co Ltd v. Heller & Partners Ltd* [1964] AC 465 which he claimed could be applied to show that the proximity of relationship imposed a duty of care on the landlord. I find that this case is inapplicable. The landlord's duty to the tenant is derived from the statute and there is no need for me to make an analysis based on negligence when the relationship between the parties is contractual in nature.

Conclusion

The tenant's claim to set aside the notice to end tenancy is dismissed and the landlord is granted an order of possession effective July 31, 2010. The tenant is awarded $992.71 which represents $180.72 for cable bills, $11.99 for screen repairs, $450.00 for rent overpayment, $300.00 for loss of quiet enjoyment and $50.00 for the filing fee. I grant the tenant a monetary order under section 67 for $992.71. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: July 8, 2010