



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, FF

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing

Preliminary Matters

A witness for the landlord was called using the Telus dialing instructions. I waited approximately 45 seconds and the witness failed to answer the call.

Toward the conclusion of the hearing I turned to the landlord for his final comments and, that point, the landlord disconnected from the conference call hearing. I then answered one question by the tenants in relation to their request for filing fee costs and the hearing was ended.

Issue(s) to be Decided

Should the 1 Month Notice ending tenancy for Cause issued on July 26, 2010, be cancelled?

Are the tenants entitled to filing fee costs?

Background and Evidence

The parties have a verbal tenancy agreement which commenced in mid-July, 2009. Rent is due on the first day of the month. The rental unit is one of 4 adjoining units.

The tenants submitted 1.5 pages of evidence, by way of a typed response to the reasons on the Notice. The landlord did not submit any evidence.

The landlord and the tenants agree that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants were required to vacate the rental unit on July 26, 2010. The reasons stated for the Notice to End Tenancy were that that the tenants have significantly interfered with or unreasonably disturbed the landlord; that the tenants have put the landlord's property at significant risk; that the tenants have engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of the landlord; that the tenants have cause extraordinary damage to the unit and that the tenant's knowingly gave false information.

The last reason, giving false information, was altered on the Notice, by deleting a portion of the reason, thus altering its meaning; therefore, I declined to hear testimony in relation to that portion of the Notice.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- That in approximately September 2009, the landlord was called to the unit to complete some repairs and found cooking oil pooling in the stove elements. This placed the rental unit at risk of a flash fire;
- That condensation has been allowed to build in the bathroom;
- That during the summer of 2010, the tenants put a wading pool on the back deck, which could have resulted in collapse of the deck;
- That the tenant had stored gas-operated equipment next to the Bar-BQ, which could have caused a fire, however, storage was offered and the equipment was moved;
- That during an inspection completed by the landlord the tenants were uncooperative, that the male tenant yelled obscenities at the landlord;
- That the tenant's dog has caused extraordinary damage to the curtains and some woodwork;
- That the tenant is stalking the landlord throughout the community; and
- That the male tenant made accusations of criminal behaviour against the landlord, while in the presence of a friend of the landlords.

The landlord presented no evidence to support the allegation of illegal activity by the tenants.

The tenants presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That the landlord repeatedly attends at the residential property and on several occasions has looked in their windows;

- That they have not accused the landlord of criminal behaviour and that it is the landlord who is following them in the community;
- That the unit has single pane windows that do collect condensation;
- That they reported a problem with the freezer in the forty year old refrigerator and the landlord became upset;
- That the wading pool was on the deck for one day only and then removed; and
- That the landlord is at the property so frequently that they feel he is encroaching on their right to privacy.

When the landlord visited their home the tenants told him they felt he was being nosey. The next day the landlord gave the tenants a hand-written notice that they must leave. The tenants directed the landlord to the Residential Tenancy Branch for information on the eviction process. The landlord then issued the 1 Month Notice ending tenancy for Cause.

The tenants are concerned as a move-in condition inspection was not completed, that the landlord has accused them of running a marijuana grow operation; although the landlord stated that it was the tenants who mentioned this to him.

The tenants did not respond to the landlord's submission in relation to any damage caused by their dog.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenancy should end pursuant to section 47 of the Act. The landlord has the burden of proving the tenancy should end for the reasons cited on the Notice, and he has failed to do so.

I find that even if there had been some oil in the stove element; that would not have formed cause to end a tenancy. The tenants removed the pool from the deck, which was not damaged. There was no evidence before me of any extraordinary damage caused by the dog.

Each party accused the other of inappropriate behaviour. The tenants denied verbally abusing the landlord or accusing him of criminal acts and the landlord denied harassing the tenants. In the absence of any evidence of the allegations made by the landlord, I find, on the balance of probabilities that the tenancy may not end for the reasons given by the landlord.

In relation to the accusations made by each party of naming-calling and interpersonal conflict issues, the landlord must provide tenants with their right to quiet enjoyment of their rental unit. The relationship between the parties has deteriorated; however, the landlord has a right under section 29 of the Act, to enter the rental unit for any

reasonable purpose; however this right may not be abused as an erosion of the right to quiet enjoyment could result.

Therefore, I find that the Notice ending tenancy for cause issued on July 26, 2010, is of not force or effect.

As the tenant's Application has succeeded, I find they are entitled to filing fee costs and may deduct \$50.00 from the next month's rent owed.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for reference by each party.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that he has grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated July 26, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

The tenants are entitled to deduct the \$50.00 filing fee from the next month's rent owed.

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: September 17, 2010.

Dispute Resolution Officer