



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, O

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated August 1, 2010.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started approximately 2 years ago. The Landlord said that on August 1, 2010, he served the Tenants in person with a One Month Notice to End Tenancy for Cause dated August 1, 2010. The ground stated on the Notice was that the "Tenant has engaged in an illegal activity that has, or is likely to damage the landlord's property."

The rental property is situated next door to the Landlord's business (a junk yard). The Landlord said that on the afternoon of August 1, 2010, a neighbour of the Tenant (and sister-in-law of the Landlord) called him to advise him that she had seen the Tenant (W.Z.) crawl through a hole in the junk yard fence and remove 10 aluminum wheels and a set of bolt cutters. This witness also claimed that she had seen the Tenant "rummaging" through other vehicles on the Landlord's property. The Landlord said he drove out to the rental property and found his rims and bolt cutters in the Tenant's yard. The Landlord said he reported this incident to the RCMP but they advised him that because the Tenant had returned the items, there was insufficient evidence to warrant laying charges.

The Tenant claimed that he found a hole in another section of the fence of the Landlord's junk yard and noticed the rims stacked up nearby. The Tenant said he believed that someone intended to return at night to steal the rims and also believed that the Landlord was away camping so he put them in his yard for safe keeping. The Tenant said he needed to borrow the bolt cutters to remove a pad lock from a gate in his yard. The Tenant said he was looking through vehicles just to ensure that nothing else was lying around that could be stolen. The Tenant claimed it is a high crime area and there have been previous incidents of break-ins. The Tenant admitted that he was

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previously employed by the Landlord but let go over an incident of taking something. Consequently, the Tenant said he thought he would do the Landlord a favour and try to win the Landlord over.

The Landlord said he did not believe the Tenant's story and argued that the Tenant could have approached his brother or sister-in-law (who live next door) if he felt there was a risk that his property would be stolen.

Analysis

The Tenant admitted that made a hole in the fence between the rental unit property and the Landlord's business property and entered onto the business property on August 1, 2010 to remove some rims and a pair of bolt cutters. The Tenant denied that he stole anything and claimed that he was safeguarding the rims and borrowing the bolt cutters.

The Landlord claims that the Tenant intended to steal the items but in any event, did not have his permission to put a hole in the fence, enter onto the business property and remove any items. The Landlord argued that if any items were at risk of being stolen, it would have been a lot simpler for the Tenant to report it to his brother and sister-in-law who live next door.

I find that it is not necessary to make a finding as to whether the Tenant intended to steal the items in question as I find that the Tenant damaged the Landlord's fence for the purpose of gaining access to the Landlord's property and did enter onto the Landlord's enclosed business premises when he knew that he was not permitted to be there, did not have the Landlord's consent to be there and did not have the Landlord's consent to remove (or borrow) any items. Section 4 of the Trespass Act of B.C. sets out the following circumstances under which a person may be found to have committed an offence:

- 4** (1) Subject to section 4.1, a person commits an offence if the person does any of the following:
- (a) enters premises that are enclosed land;
 - (b) enters premises after the person has had notice from an occupier of the premises or an authorized person that the entry is prohibited;
 - (c) engages in activity on or in premises after the person has had notice from an occupier of the premises or an authorized person that the activity is prohibited.

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- (2) A person found on or in premises that are enclosed land is presumed not to have the consent of an occupier or an authorized person to be there.
- (3) Subject to section 4.1, a person who has been directed, either orally or in writing, by an occupier of premises or an authorized person to
 - (a) leave the premises, or
 - (b) stop engaging in an activity on or in the premises,commits an offence if the person
 - (c) does not leave the premises or stop the activity, as applicable, as soon as practicable after receiving the direction, or
 - (d) re-enters the premises or resumes the activity on or in the premises.

In the circumstances, I find that the Tenant damaged the Landlord's property by putting a hole in the fence on the rental property for the purpose of trespassing onto the Landlord's business premises which is an illegal act. Consequently, I find that the Landlord has grounds for issuing the One Month Notice to End Tenancy for Cause dated August 1, 2010 and that Notice will remain in force and effect. Given that the Notice was served on the Tenants on August 1, 2010, the earliest that Notice could take effect would be September 30, 2010 and the effective date of the Notice is accordingly amended to September 30, 2010 pursuant to s. 53 of the Act.

Conclusion

The Tenants' application is dismissed without leave to reapply and the One Month Notice to End Tenancy for Cause dated August 1, 2010 will stand. 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 29, 2010.

Dispute Resolution Officer