Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, MNDC, OLC

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to call witnesses, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside; whether there is a need for an Order requiring the Landlord to comply with the Act; and whether the Tenants are entitled to compensation for the Landlord entering the rental unit without proper notice.

Evidence and Background

The Agent for the Landlord and the Tenants agree that the Tenants moved into the rental unit on June 29, 2010 and that they are required to pay monthly rent of $750.00.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was sent to the Tenant, via regular mail, on September 17, 2010. The male Tenant acknowledged receipt of this Notice on September 22, 2010. The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was sent to the Tenant, via registered mail, on September 23, 2010. The male Tenant acknowledged receipt of this Notice on September28, 2010.

Each One Month Notice to End Tenancy for Cause declared that the Tenants must vacate the rental unit by October 31, 2010. Each One Month Notice to End Tenancy for Cause declared that the Landlord was ending the tenancy because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or

unreasonably disturbed another occupant or the landlord; the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Agent for the Landlord and the Tenants agree that the Landlord gave the Tenants permission to keep two small dogs in the rental unit and that the Tenants paid a pet damage deposit of $375.00 on June 28, 2010.

The Landlord and the Tenant each submitted a copy of the tenancy agreement that was signed by these parties. Section 18 of the tenancy agreement reads:

> *Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or exotic animal, domestic or wild, fur bearing or otherwise. Where the landlord has given his permission in advance in writing, the tenant must ensure that the pet does not disturb any person in the residential property or neighbouring property, and further the tenant must ensure that no damage occurs to the rental unit or residential property as a result of having or keeping the pet. This is a material term of this Agreement. If any damage occurs caused by the pet, the tenant will be liable for such damage and will compensate the landlord for damages, expenses, legal fees, and/or any reasonable costs incurred by the landlord. Further, if the landlord gives notice to the tenant to correct any breach and the tenant fails to comply within a reasonable time, the landlord has a right to end the tenancy along with making the appropriate claims against the tenant. Having regard to the potential safety issues, noise factors, health requirements, and mess, the tenant will not encourage or feed wild birds or animals at or near the residential property.*
>
> [Emphasis added]

The Landlord submitted a copy of a Form K Notice of Tenant's Responsibilities that was signed by these parties and a copy of the strata corporation bylaws. Article 3(4)(d) of the strata bylaws stipulates that pets will not be kept on a strata lot except one dog and one cat not exceeding full grown height of fifteen inches. The Agent for the Landlord stated that the strata allows a maximum of two dogs to be kept on a strata lot on the strength of article 3(4)(b) of the bylaws, which stipulates that more two domestic mammals can be kept on a strata lot.

The male Tenant acknowledged that there is frequently a third dog at the rental unit. The male Tenant stated that this dog belongs to a relative who visits frequently. He estimated that the third dog stays overnight approximately five times per week.

The Agent for the Landlord and the Tenant agree that the Tenant received a letter from the Landlord, dated August 25, 2010, a copy of which was submitted in evidence. In the

letter the Agent for the Landlord advised the Tenants that he believes the Tenants are keeping three dogs in the rental unit and that they have ten days to reduce the number of dogs in the unit to two.

The male Tenant stated that they did not comply with the direction to reduce the number of dogs in the rental unit because they sought advice from the Residential Tenancy Branch and were advised that they could keep as many dogs as they wish, providing they pay a pet damage deposit. He stated that he believes he can have a "puppy party" provided he had paid the pet damage deposit.

The Agent for the Landlord contends that the Tenants have been smoking marijuana in the rental unit and that he personally smelled marijuana in the unit when he was speaking with the female Tenant at the door to her unit on September 23, 2010. He stated that he has received letters of complaint regarding the smell of marijuana from the owner of one of the suites above this rental unit.

The male Tenant stated that they do no smoke marijuana in the rental unit and he called two witnesses, who live in the residential complex, who declared they have never smelled marijuana in the Tenant's rental unit.

The Agent for the Landlord contends that the Tenants have disturbed others by arguing and barking dogs. He stated that he has received several verbal complaints about noise disturbances and two written complaints from the owner of one of the suites above this rental unit.

The male Tenant stated that they are not unreasonably loud and he called two witnesses, who live in the residential complex, who declared they have never heard excessive amounts of noise in the Tenant's rental unit.

The Agent for the Landlord and the Tenant agree that a notice was posted on the door of the rental unit on September 23, 2010 sometime prior to noon. The parties agreed that the Agent for the Landlord and the Tenant with the initials "D.G." had a discussion about the notice on September 23, 2010 shortly after it was posted, at which time the Tenant was advised that the Landlord wished to show the unit to a potential tenant. The notice that was posted on the door of the rental unit advised the Tenants that the Landlord would be entering the rental unit on September 24, 2010, between 2:00 p.m. and 5:00 p.m., although it does not declare the purpose for entering.

The Landlord stated that at approximately 2:30 p.m. on September 24, 2010 he knocked on the door of the rental unit; that nobody answered the door; that he entered the rental unit with his key; that a female in the rental unit directed him to leave; and that he left after being refused permission to enter.

The Tenant with the initials "L.V" advised that she had not been advised the Landlord would be accessing the rental unit on September 24, 2010; that she did not know the Landlord; that she told him to leave and they argued about whether she was a tenant in

the unit; that she felt intimidated by the Landlord; and that he left after she picked up the telephone to call the police.

The male Tenant stated that he believes they had authority to refuse the Landlord access to the unit because the Landlord's notice did not state the reason for accessing the rental unit. The Tenants contend that this incident seriously disturbed the Tenant with the initials "L.V. and caused the entire family to worry that the Landlord will access the rental unit without lawful authority and they do not feel comfortable leaving the rental unit vacant.

Analysis

Section 47(1) of the *Act* stipulates that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(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, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(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, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

The Landlord only needs to establish that one of these grounds for ending the tenancy exists. After considering the evidence regarding the third dog in the rental unit, I find that the Landlord has established that this tenancy should end pursuant to section 47(1)(h) of the *Act*.

In reaching this conclusion, I was heavily influenced by the undisputed evidence that the Tenants were only given permission to keep two dogs in the rental unit. I find that the number of pets in the rental unit was a material term of this tenancy. In determining that having no more than two pets in the rental unit was a material term of the tenancy agreement, I was influenced by the following:

- The fact that the Tenants were asked to disclose the number of pets in the rental unit prior to the beginning of the tenancy
- The fact that the Tenants understood they were only allowed to keep two dogs in the rental unit
- The fact that the Tenants signed a Form K, in which the Tenants agreed to comply with the strata corporation rules and bylaws
- The fact that strata corporation rules do not allow for more than two domestic mammals on a site
- The fact the tenancy agreement that was signed by each Tenant clearly outlines that the tenants cannot not keep or allow pets on the residential property without written authority
- The fact the tenancy agreement that was signed by each Tenant clearly stipulates that the pet clause is a material term of the tenancy.

Based on the Tenant’s acknowledgement that they have a third dog staying overnight in the rental unit approximately five times each week, I find that the Tenants have breached

the material term of the tenancy regarding dogs. While it may be argued that having a dog visit or stay overnight in the rental unit occasionally is not a breach of this term, I find that having a dog stay at the rental unit more than half time is a significant breach of this term.

The undisputed evidence is that the Tenants were given written notice to remove the third dog, in a letter dated August 25, 2010. The undisputed evidence is that the Tenants are continuing to allow the third dog to frequently stay in the rental unit and they have no intention of restricting the dog's access to the rental unit. I therefore find that the Tenants have failed to comply with a material term of their tenancy agreement and they have failed to remedy the breach of this term, even though they have been given written direction to remedy the breach.

Section 29(1)(b) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless at least twenty-four hours and not more than thirty days before the entry the landlord gives the tenant written notice that provides notice of the purpose for entering, which must be reasonable, and the date and time of the entry, which must be between 8 a.m. and 9 p.m., unless the tenant otherwise agrees.

I find that sometime prior to noon on September 23, 2010 the Agent for the Landlord posted notice of his intent to enter the rental unit on the Tenant's door and that the Agent for the Landlord and the Tenant with the initials "D.G." discussed that notice shortly after it was posted. On this basis, I find that the Tenant with the initials "D.G." was sufficiently served with this notice on September 23, 2010 at noon. I find that this notice advised that the Landlord would be entering the rental unit between 2 p.m. and 5 p.m. on September 24, 2010.

I find that the Landlord failed to comply with section 29(1)(b) of the *Act* because the notice to enter the rental unit did not specify the purpose for entry. I find this breach of the *Act* was fairly trivial, given that on September 23, 2010 the Agent for the Landlord verbally advised the Tenant with the initials "D.G." that he wished to show the rental unit to a potential tenant.

When making a claim for financial compensation under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the circumstances before me, I find that the Landlord's failure to declare the purpose for entering in the rental unit on September 24, 2010 did not contribute to any damages suffered by the Tenants. Any discomfort or fear that was experienced by the Tenant with the initials "L.V." on September 24, 2010 cannot be attributed to the Landlord's failure to provide written notice of the purpose for his entry. Rather, it was more likely

attributable to the failure of the Tenant with the initials “D.G.” to advise the Tenant with the initials “L.V.” of the Landlord’s plan to enter the rental unit.

I further find that the Tenants concerns that the Landlord may enter their rental unit without lawful authority to be unreasonable, given the Landlord has not demonstrated a history of entering the rental unit without proper notice and the Landlord’s breach of section 29(1)(b) of the *Act* in these circumstances is trivial.

For these reasons, I dismiss the Tenants’ claims for compensation of $750.00.

Conclusion

As I have determined that the Landlord has established that it has grounds to end this tenancy pursuant to section to section 47(1)(h) of the *Act*, I hereby grant the Landlord an Order of Possession, as requested at the hearing. This Order of Possession requires the Tenant to vacate the rental unit by October 31, 2010, which is the effective date of the Notice to End Tenancy.

I hereby remind the Landlord that it must comply with section 29 of the *Act* when entering the rental unit. For the benefit of both parties, section 29 of the *Ac*t reads, in full, as follows:

> A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
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> (d) the landlord has an order of the director authorizing the entry;
>
> (e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

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: October 28, 2010.

Dispute Resolution Officer