

Decision

Dispute Codes: ET / OP, CNC, MNDC, OLC.

Introduction

This hearing dealt with two applications: i) by the tenant for cancellation of a 1 month notice to end tenancy for cause, a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and an order instructing the landlord to comply with the Act, regulation or tenancy agreement; ii) by the landlord for an early end to tenancy and an order of possession. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

What is presently a month-to-month tenancy began on September 1, 2001. The tenant's portion of monthly rent is \$320.00.

Arising from various concerns about the tenancy, the landlord issued a 1 month notice to end tenancy for cause dated September 23, 2010. The notice was served on the tenant by way of posting on his door on September 24, 2010. A copy of the notice was submitted into evidence. The reason shown on the notice for its issuance is as follows:

Tenant or a person permitted on the property by the tenant has:

- x significantly interfered with or unreasonably disturbed another occupant or the landlord

Thereafter, the tenant filed an application for dispute resolution on September 28, 2010. While it is not clearly shown on his original application, the parties agreed during the hearing that the tenant's intent is to dispute the notice.

Further, in his application the tenant seeks a monetary order in the amount of \$4,500.00 as compensation for what he alleges is the landlord's failure to abide by an order set out in a previous decision by a dispute resolution officer dated August 26, 2009. The subject order reads as follows:

I HEREBY ORDER that the maintenance person of the landlord avoid banging the fence within ten feet of the tenant's unit when possible in the circumstances.

In his application the tenant also seeks an order instructing the landlord to comply with the above order.

During the hearing the tenant indicated that the amount of compensation sought is calculated on the basis of \$100.00 per alleged breach of the order. Related documentary evidence submitted by the parties includes, but is not necessarily limited to, copies of correspondence back and forth between the tenant and the landlord, "caretakers incident report(s)," a "To whom it may concern" letter from an employee of a restoration and painting company doing work around the building, and a letter to the landlord from another resident on behalf of him/herself and several other residents.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

End of Tenancy & Moving:

- that the tenant will vacate the unit by not later than 1:00 p.m., Monday, January 31, 2011, and that an order of possession will be issued in favour of the landlord to that effect;
- that should the tenant wish to vacate the unit before the effective date of the order of possession, he undertakes to provide the landlord with proper notice to end tenancy;
- that at such time as the tenant secures alternate accommodation, the parties will communicate directly with each other in regard to planning specific arrangements for the move.

Compensation:

- that, further to the above, the landlord will assume ultimate responsibility for contacting the mover to be used, overseeing the move, taking delivery of the invoice for moving costs, and paying the full cost of the tenant's move

Following a careful review of the documentary evidence and full consideration of the testimony of the parties, I find that the tenant has failed on a balance of probabilities to meet the burden of proving entitlement to compensation which is further to that agreed upon between the parties as above. Accordingly, the aspect of the tenant's application

which concerns a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement is hereby dismissed.

Order for the landlord to comply with the Act, regulation or tenancy agreement:

While I find there is insufficient evidence for me to conclude that the landlord has failed to comply with the order made in the decision issued August 26, 2009, I remind the parties that the order has been issued and that it is the landlord's responsibility to comply. In the result, this aspect of the tenant's application is hereby dismissed.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Monday, January 31, 2011**. This order must be served on the tenant. 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.

DATE: November 3, 2010

Dispute Resolution Officer