



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, OPB, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for cause, as described in the *Act*, regulation or tenancy agreement; for an Order of Possession for breach of an agreement with the landlord; and to recover the filing fee from the tenants for the cost of this application.

The landlord company was represented by two agents, who stated that they are co-owners of the apartment complex. Both tenants also attended the conference call hearing. All parties gave affirmed testimony and were given the opportunity to cross examine each other on their testimony. The landlords also provided an evidence package to the Residential Tenancy Branch and to the tenants. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause, as described in the *Act*, regulation or tenancy agreement?

Is the landlord entitled to an Order of Possession for breach of an agreement with the landlord?

Background and Evidence

This month-to-month tenancy began on February 15, 2009 and the tenants still reside in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the first day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$400.00.

The landlord's agents testified that the tenants left an unlicensed truck parked in the underground parking area and promised the landlord month after month that they would insure it. The tenants collected items and put them in the back of the truck and some on the balcony and inside the suite, which attracted mice. Then one of the tenants told

the landlord's agent that there were mice in her suite which were attracted by the garbage piled on the balcony. The City asked the landlords to have the truck towed because it is a fire hazard. The landlords gave the tenants notice that it had to be moved, but the tenants had it towed to the side of the building, still full of items, after the landlords served a 1 Month Notice to End Tenancy for Cause.

The landlord's agents further testified that another tenant in the building had been evicted for selling drugs. Also a tenant in the suite under this unit complained that too many people are at this unit every night. One of the landlord's agents saw the same people attend this unit that had been attending the unit of the tenants who had been evicted for selling drugs. She also testified that she followed the guests and saw them go to this unit and saw the tenant with the guests.

The landlord's agents also testified that the female tenant uses the fire door. She was told that she was not permitted to use it, but she continues to and leaves the door open.

The landlord's agent stated that a material term of the tenancy was that no other occupants would reside in the unit and that it would be kept clean. She stated that many people are inside that unit at night, and the unit smells. She has spoken to them about the cleanliness of the unit and witnessed the female tenant pick up things from the street, such as paper cups and take them to the rental unit.

The male agent of the landlord stated that the tenants have not cleaned the suite. He stated that he was in the suite in February, 2011 with the intercom technician. A friend of the tenants was there at the time. He also stated that he couldn't walk in there, the smoke detector had been removed and he couldn't put it back due to clutter. He stated the whole apartment looks like a storage unit, and one cannot walk through.

At the end of January, 2011 the tenant asked if she could stay beyond the effective date of the notice to end tenancy because she couldn't find another place to live. The landlord's agent agreed that they could stay for one more month, but they had to clean up the unit, prevent heavy traffic going to and from the unit, and keep the music down. She further testified that other tenants keep asking when these tenants are moving. She stated they are dirty and they don't care.

A copy of the 1 Month Notice to End Tenancy for Cause was provided in advance of the hearing. The notice is dated December 7, 2010 and contains an expected date of vacancy of January 31, 2011. It states that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and has put the landlord's property at significant risk. It also states that the tenant has engaged in illegal activity that has, or is likely to

damage the landlord's property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. A copy of the written permission to stay for an extra month beyond the effective date of the notice was also provided. The note is dated February 1, 2011 and it states that the landlords agree to let the tenants stay for an extra one month only, and also based on the following conditions:

1. No heavy traffic, no loud music (People below complain they can't sleep);
2. Stop picking up junk from street and bring into the suite;
3. Too much junk inside the suite – you have to clean up and get rid of those you don't need; other tenants complain the unit is dirty and smelly – this is a health issue;
4. Remove the truck or put insurance on it;
5. Landlord will inspect the suite;
6. Or, you have to move out immediately.

The landlord's agents also provided a copy of a warning letter dated November 2, 2010 that speaks of several previous discussions requesting cleaning up the apartment and the sundeck. It also states that a fumigator will be by but cannot do the job if he's not able to walk around the rental unit.

The tenants testified that they are being mistreated by the landlords. The male tenant stated that they have no control over what other people put in his truck, and he has no storage space. He stated that he cleaned out the truck leaving tools and similar items, and that his battery and radiator were stolen from the truck.

The male tenant also testified that another tenant with the same name lives in another unit on the same floor of the apartment building, and his company knocks on their door, and it's the other unit that has heavy traffic. When asked why he allows street people to shower at his suite, and about the rental unit begin dirty and unhealthy, the tenant replied that it's his business.

The female tenant testified that the rumours are not true. She stated that another tenant was moving out and threw his couch over the deck and then screamed when he discovered that rats had nested in it. One rat crawled up the wall of the building into their unit. They got rid of the problem using traps and poison, and the male tenant killed 2 with a golf club, and then she gave the suite a good cleaning. She further testified that the landlord's agents have not talked to her about traffic, and she doesn't know the guests.

Analysis

The *Residential Tenancy Act* specifically states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Therefore, I find that the tenant's response to questioning about cleanliness and health being his business is contrary to the *Act*. I also accept the evidence of the landlord's agents that the unit is not clean or healthy, and that a material term of the tenancy was to clean the unit. I further find that the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I accept the evidence of the landlord's agents that verbal warnings and written warnings have been given, and nothing has changed, other than moving the truck. I further find that the notice complies with the *Act*.

The landlords provided an extension in writing for a period of one month, and the notice is clear that only one month extension would be granted, bringing the effective date of the notice to the end of February, 2011. I find that the parties had agreed that the effective date of the notice would be extended to February 28, 2011 and that the conditions for the extension were accepted by the tenants at that time but have failed to comply with the written warnings, verbal warnings and letter authorizing the extension.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord. If the landlord serves the Order of Possession on the tenants and the tenants 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 further grant a monetary order in favour of the landlord in the amount of \$50.00, and I grant an order that the landlord recover that amount from the security deposit currently held in trust.

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: March 21, 2011.

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