



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing was convened in response to the tenant's application seeking more time to make an application to cancel a Notice to End Tenancy given for cause and seeking to cancel a Notice to End Tenancy given for cause and recover the filing fee paid for this application.

Both parties attended and gave evidence under oath. The tenant's wife also attended the hearing although she was not introduced to the Dispute Resolution Officer. She was not a party named by the applicant in these proceedings and she did not give testimony under oath.

Issue(s) to be Decided

Has the tenant proven that extraordinary circumstances exist such that he was not able to file this application within the applicable time limits? Does the landlord have cause to end this tenancy. Should the tenant recover the filing fee?

Background and Evidence

The tenant tenants he was given a 1 month notice to vacate the premises on February 21, 2011 although in his application for dispute resolution he states he is disputing a Notice to End Tenancy received on "... April 13, 2011 at around 8:00 PM." The tenant submits that the landlord is being unfair in not allowing the tenants to vacate "...within the time frame they have asked for." The tenant states that he is asking for more time to find suitable accommodation. The tenant testified that he has lived in the rental unit for 18 years and he is presently unemployed and has no funds for moving or to pay the rent.

The articulated student appearing as counsel for the landlord submitted that the tenant was served with a Notice to End Tenancy for Cause because the tenant has constructed sheds on the property without permits and without the permission of the landlord. The City of Surrey has instructed the landlord to tear the sheds down. The landlord has

directed the tenant to tear the sheds down on several occasions and the tenant agreed to tear them down but has failed to do so. Landlord's counsel submits that because there are outbuildings on the property that were constructed without proper permits and are now the subject of a City order for removal, the landlord had a very difficult time finding an insurer willing to insure the property.

The tenant submits that he constructed the sheds 10 years ago and that the only reason the City visited the property and issued its orders is because the landlord asked the City to inspect the property. The tenant did not submit evidence to support this claim. The tenant submits that there are a lot of other outbuildings on the property. The tenant says he was willing to remove the sheds at one time but he needs the extra space because the house is too small for all of his belongings. The tenant says he is willing to move but requires more time to do so. The tenant also says he does not have the funds to pay to demolish the sheds nor does he have funds to move or to pay rent further that he has not been able to secure new accommodation.

In response to the tenant's request for more time to move, counsel for the landlord says that the landlord has made repeated requests for the tenant to remove the sheds to no avail and the landlord now faces consequences that may be imposed by the City with respect to the sheds. Counsel for the landlord says the landlord is unable to extend the time to vacate the premises and the landlord is seeking an immediate Order of Possession.

The tenant responded that if an Order of Possession is issued he will simply wait until the landlord is forced to hire a bailiff to remove him and/or he will take this matter "...to the next level" because he does not have the money to move.

Analysis

The tenant has made an application for more time to make this application. His evidence, as stated in his application for dispute resolution states that he was served with the one month Notice to End Tenancy for Cause on April 13, 2011 and I will accept his evidence in this regard. The tenant then filed his application seeking to dispute the notice on April 15, 2011. The applicant has therefore filed his application within the proper time limits and this application for more time to make his application is therefore dismissed as it is not required.

The landlord has submitted evidence that the City of Surrey has ordered that the sheds be removed because they are built without proper permits. The landlord has made repeated requests to the tenant to remove the sheds but the tenant has refused. The

tenant says he does not have the money to remove the sheds and while he is prepared to move he cannot move at this time because he does not have the money and has been unable to secure new accommodation.

The tenant does not deny any of the landlord's allegations, but says that he does not have the money to remove the sheds and he simply requires more time to vacate the property.

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(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;

Based on the evidence of both parties I find that the landlord has cause to end this tenancy, the tenant has constructed sheds the property. The landlord says he did not give his permission for the tenant to build the sheds and the tenant has failed to produce evidence that he had permission to build the sheds. Further the sheds are now the subject of a City's removal order with which the tenant had refused to comply. In so doing I find that the tenant has jeopardized the lawful right or interest of the landlord.

Having found in favour of the landlord, the tenant's application for recovery of the filing fee paid in this matter is dismissed.

Conclusion

The landlord has requested an Order of Possession. Having found that the landlord has cause to end this tenancy I will issue that Order. The effective date of the Order will be fixed at May 31, 2011 at 1 o'clock in the afternoon. The landlord will be provided with a formal Order in these terms. If the tenant fails to comply with the Order this Order may be enforced as an Order of the Supreme Court of British Columbia.

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*.
