



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application: CNC; OLC; LRE

Landlords' application: OPC; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a One Month Notice to End Tenancy for Cause; for an Order that the Landlords comply with the Act, regulation or tenancy agreement; and an Order suspending or setting conditions on the Landlords' right to enter the rental unit.

The Landlords seek an Order of Possession; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related.

I find that that the Tenant's requests for Orders are not sufficiently related to the main issue, which is to cancel the Notice. For these reasons, I dismissed the Tenant's application for those Orders **with leave to reapply**.

Likewise, I find that the Landlords' request for compensation for damage or loss under the Act, regulation or tenancy agreement is not sufficiently related to the main issue, which is to obtain an Order of Possession. Therefore, I dismissed this portion of the Landlords' application **with leave to reapply**.

Issue(s) to be Decided

1. Should the One Month Notice to End Tenancy for cause issued June 17, 2011, be upheld or cancelled?

Background and Evidence

The rental unit is the lower suite of a house. The Landlords occupy the upper suite. This tenancy started on June 1, 2009. A copy of the tenancy agreement was provided in evidence. There is an addendum to the tenancy agreement, banning the use of pesticides and fabric softeners on the rental property.

The Tenant received a One Month Notice to End Tenancy for Cause (the "Notice") on June 17, 2011. A copy of the Notice was provided in evidence. The Landlords allege the following reasons for ending the tenancy:

- the Tenant ~~is~~ will be repeatedly late paying rent;
- the Tenant or a person permitted on the property by the Tenant has:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the Landlord,
 - (ii) seriously jeopardized the health or safety or a lawful right of another occupant or the Landlord,
 - (iii) put the landlord's property at significant risk; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlords testified that the Tenant was late paying rent for the months of July, August, September, October and November, 2009. In addition, the Landlords submit that the Tenant refuses to provide post-dated cheques for when the Landlords are away.

The Tenant stated that she had been advised by her lawyer not to provide post-dated cheques. She testified that she had offered to deposit the rent money into the Landlord's account, but the Landlords would not agree to that method of payment.

The Landlords testified that in an attempt to make the Tenant comfortable at the rental unit, they agreed not to use pesticides or fabric softener on the property but that the Tenant had enlarged the definition of pesticides to include any and all materials that contain components found in pesticides. The Landlords testified that the Tenant was interfering with improvements being made to the property. For example, the Tenant interfered with a man who was on the property to paint the fence while the Landlords were out of town. The Landlords alleged that the Tenant told the painter that if he used the paint he was provided, he might die from cancer. The Landlords also alleged that the Tenant told the painter if he did not stop using that paint, the Tenant would be

forced to go to a hotel and charge the Landlords. The Landlords stated that the painter felt intimidated by the Tenant and did not paint the fence. The Landlords submit that the Tenant has also tried to dictate what kind of paint, glue and fixative is used when they repair a wall in the Tenant's kitchen. The Landlords stated that the Tenant is trying to control all cleaning, gardening, remodelling and painting done on the property.

The Tenant stated that the Landlords had agreed that certain chemicals would not be used on the rental property, due to her chemical sensitivities, and that she was only trying to abide by their agreement. She stated that she had gone to the trouble to find out safe alternatives to the indoor and outdoor paint and had provided the Landlords with those choices. The Tenant denied intimidating the painter and said she was only trying to educate him about the dangerous chemicals included in the paint. She stated she was not threatening the painter, but it was a fact that if he used the paint she would have to leave the property.

The Landlords submitted that, until they were provided with the Tenant's evidence package, they were unaware of the extent of her chemical sensitivities. The Landlords testified that until they were provided with the Tenant's evidence package, the only medical condition they were aware of was the Tenant's allergy to electromagnetic fields.

The Landlords submitted that the female Landlord is suffering from congestive heart failure and has been advised by her doctor to limit her contact with the Tenant because the stress of the Tenant's unreasonable demands are jeopardizing the female Landlord's recovery.

The Tenant submitted that the female Landlord need not have any dealings with the Tenant and that she could deal solely with the male Landlord.

The Landlords testified that the Tenant is refusing to take her garbage to the curb for collection and is stacking it against the house. The Landlords submitted that this is a health hazard. The Landlords testified that the curb was 30 yards from the Tenant's door, and that they had provided her with a trash can with wheels.

The Tenant stated that garbage collection is included in the rent and that she is disabled and unable to lift more than 1 to 2 kilograms. The Tenant stated that her garbage does not contain anything that would attract vermin.

The Landlords testified that the Tenant has had ongoing concerns about electrical sparking in the suite. The Landlords stated that they hired a contractor to go through the suite at the beginning of the tenancy and he found nothing wrong. About a year later, the Tenant complained about electrical sparks and the Landlords investigated but found nothing wrong. The Landlords testified that they gave the Tenant a "tester", which is a device that glows red if there is a problem and green if the electrical connection is alright. This seemed to work for the Tenant for awhile, but the next year the Tenant complained that she was concerned that the "tester" should be used by a professional.

The Landlords testified that the Tenant advised them that her fridge had made a strange cracking sound, followed by an odd odour which spoiled some food. The Landlords hired a repairman immediately to look at the fridge, but he found no problem. The Landlords testified that they went away shortly afterwards and during their absence and without their permission, the Tenant called the BC Safety Authority. The inspector found no health or safety concerns in the rental unit, but did discover some electrical work had been done that was not to code. The Landlords testified that the inspector assured them there was no danger to the Tenant but that since he had seen the unauthorized work, he had to report it. The Landlords testified that it cost them \$1,400.00 to bring the electrical work to code. The Landlords provided a copy of the inspector's report in evidence.

The Tenant stated that the "tester" was limited in what it could do. She stated that she called the authorities because the Landlords refused to do anything about the sparking.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Notice to End Tenancy is valid and should not be cancelled. **The Tenant's application to cancel the Notice to End tenancy is dismissed.**

Considering the totality of the evidence, I find that the Tenant has significantly interfered with and unreasonably disturbed the Landlords. The Tenant had no right to arrange for an electrical inspection of the rental unit without the Landlords' knowledge and consent. The Tenant's remedy would have been to file an Application for Dispute Resolution requesting an Order that the Landlord have the rental property inspected for electrical problems. She did not.

The tenancy agreement includes garbage collection as a service, in other words the Landlords pay for the collection of garbage. However, it is the responsibility of the Tenant to ensure that it is available for pick up. If the Tenant is unable to take the garbage to the curb, then she is responsible for arranging for someone else to do so. I find that stacking accumulated garbage beside the house is a health hazard and possibly a fire hazard.

The Notice to End Tenancy was provided to the Tenant on June 17, 2011, and therefore I find that this tenancy will end on July 31, 2011. The Landlords are provided with an Order of Possession **effective July 31, 2011, at 1:00 p.m.**

The Landlords have been successful in their application for an Order of Possession and are entitled to recover the cost of the \$50.00 filing fee from the Tenant. Further to the provisions of Section 72 of the Act, the **Landlords may deduct \$50.00 from the security deposit.**

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued June 17, 2011, is **dismissed**.

I hereby provide the Landlords an Order of Possession **effective 1:00 p.m., July 31, 2011**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords may deduct **\$50.00** from the security deposit, representing recovery of the cost of the filing fee from the Tenant.

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: July 22, 2011.

Residential Tenancy Branch