DECISION

Dispute Codes: Tenants' Application: DRI, CNC, MNDC, AS, FF and O
Landlord's application: OPC and FF

Introduction

These applications were brought by both the landlord and the tenants.

The tenants' application was originally set for hearing on July 21, 2011 and was adjourned at the request of the landlord to be heard together with the landlord's application which had been scheduled for August 11, 2011. However, in assessing the request for adjournment and to clarify some of the issues in contention, the hearing did proceed for one hour as recorded in my Interim Decision of July 21, 2011.

The tenants applied on June 27, 2011 seeking to have set aside a Notice to End Tenancy for cause (to comply with a municipal government order). The tenants also sought rent abatement on an improper rent increase, monetary compensation for loss of quiet enjoyment authorization to assign or sublet, and recovery of the filing fee for this proceeding.

As a matter of note, my interim decision erred in identifying the tenants as having had a bus which they advise is, in fact, a recreational vehicle with trailer and the outbuildings to which I referred are supported roofs rather than complete structures. In addition, the misspelling of the property manager's name is corrected on the cover page herewith.

The landlord applied on July 13, 2011 for an Order of Possession based on the same Notice to End Tenancy challenged by the tenants who had been served in person on or about June 28, 2011.

As noted in my interim decision, I have amended the tenants' style of cause to change the name of the respondent to correspond with the parties named in the landlord's application and for reasons to follow:

Issues to be Decided

This dispute requires a decision on whether the Notice to End Tenancy should be upheld or supported with an Order of Possession. In addition, it requires further decisions on the tenants' claims for rent abatement and remedies for various claimed damages.

Background, Evidence and Analysis

According to evidence submitted by the tenants, the landlords and tenants who had previously been friends and neighbours, rented the subject rental property together approximately 13 years ago. At present, total rent is $1,090 per month paid by the upstairs tenant who in turn receives $500 per month from the applicant tenants for their share of the rental property.

In my interim decision, I asked the parties to be prepared to address three fundamental questions when the hearing reconvened. Those were:

Who is the landlord? This matter required clarification because it is among the matters in dispute. The property owner has assigned a property management firm to administer the rental property. It is the position of the property manager that the upstairs tenant rents the whole property and is landlord to the downstairs tenants. The downstairs tenants hold that their rental agreement is with the property owner, and that they are, therefore accountable to him through the property manager. The property manager has on several occasions referred the downstairs tenants to the upstairs tenants when they have brought landlord/tenant issues to her attention. It is notable but inconsequential that the ownership has changed during the material periods.

I find this question resolved by a rental agreement between the property owner of the day and the upstairs tenants, undated, but covering the period from October 1, 2007 to March 31, 2009. The document's title includes the property address and the phrase "whole house." That document, evidence of the tenants that they pay their rent to the upstairs tenant and the fact that they customarily spend eight months annually travelling on exotic reptile exhibits and educational programs support the proposition that the upstairs tenant is the landlord of the downstairs tenants.

As noted, I have amended the style of cause on the tenants' to substitute the name of

the individual property manager and the property management company with the name of the upstairs tenant.

Is this a residential tenancy? My initial concern was that this might be a commercial tenancy based on an earlier alleged parking contravention rather than a residential tenancy. However, on the tenant having noted that the vehicle in question is a recreational vehicle and trailer bearing no commercial markings, I accept that it is not a commercial tenancy. I have also contemplated whether this action is more appropriately a matter for the *Manufactured Home Park Tenancy Act*. The tenants propose that it is a residential tenancy as their rent includes a room in the downstairs area of the residential building. The property manager gave evidence that when she participated in an inspection of the room in question, she recalled that it mostly contained reptile tanks and she did not recall seeing a bed. The tenants stated that they had normally used the room for sleeping, they had recently moved it into the recreational vehicle as the behaviour of the landlord's husband had become so bizarre and overtly hostile toward them that they no longer felt safe sleeping in the house.

Are the tenants exempt from the parking bylaw? At the first session of the hearing, the tenants had raised the proposition that the actions of municipal authorities that led to issuance of the Notice to End Tenancy was of no effect because they had been successful in a court decision recorded on April 30, 2003 challenging a parking violation for parking a commercial vehicle adjacent to a residential property. On reflection, I must find that it is beyond my jurisdiction to evaluate actions taken by municipal officials under a municipal bylaw.

Section 47(1)(k) of the *Act* provides that a landlord may issue a notice to end tenancy for cause in circumstances under which "the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority."

I am persuaded that a letter from the municipality dated April 19, 2011which advises the property manger to "Please take the necessary action to permanently remove the recreational vehicle from the property by July 2, 2011" and cites the pertinent zoning bylaw. In a follow up response on July 26, 2011 to the property manager, the manager of the original letter's author reiterates the bylaw and extends the deadline, but implies further enforcement action if the recreational vehicle is not removed.

I find those documents to constitute a municipal government order as contemplated by section 47(1)(k) of the *Act.*

Therefore, I find that the Notice to End Tenancy is lawful and valid and that the landlord is entitled to the Order of Possession to achieve compliance with the order.

In discussing that that finding, the parties agreed that September 30, 2011 as the end of tenancy date would achieve some balance in permitting the tenants reasonable time to relocate and provide assurance to the municipality that compliance with their order was imminent.

As to the tenants' application, they make claim for rent abatement on the grounds that the landlord (in fact the landlord's husband) had imposed an illegal rent increase on July 9, 2010 raising the rent from $350 per month to $500 per month.

However, the landlord has submitted into evidence an agreement between the tenants and the landlord that the tenant would pay $500 for exclusive use of the garage, electricity, hot water and parking with the proviso that the landlord "will not raise the rent for years to come."

Without agreement, such an increase would vastly exceed the annual allowable increase under the *Act*. The tenant stated that he signed the agreement to prevent the landlord's erratic threat of large rent increases and that he had done so under duress in view of the landlord's husband's threats to "pay the increased rent or leave."

The property manager noted that the agreement had been drafted by the tenant and the landlord does not speak or read English.

Section 43(1)(c) of the *Act* permits, among other contingencies, that a landlord may increase rent up to an amount agreed to in writing by the tenant. Therefore, I cannot find that it was an illegal increase and order rent abatement. Neither do I find sufficient evidence of duress to extinguish the agreement. The matter is raised almost a year after the fact and after issuance of the notice to end tenancy, and as the tenants have demonstrated in the present application, they are very adept at utilizing due process.

Finally, the tenants have submitted copious amounts in evidence in support of claims against the husband of the landlord in disrupting their quiet enjoyment of the rental unit. The tenants have submitted evidence of the landlord's husband uttering threat against the male tenant, throwing animal waste on their car, urinating on and damaging the wheels of their vehicle, breaking their window and breaking into the rental unit.

However, the male tenant has advised that these matters are under active investigation by police and he believes that will result in criminal proceedings or their advice that he initiate civil proceedings. As these allegations may be, or may shortly be, before the courts I defer jurisdiction. However, in the event court proceedings do not materialize, or in the event the court directs the tenant back to the branch, the tenant has leave to reapply on those issues.

Conclusions

1. The upstairs tenant is landlord to the downstairs tenants and had standing to issue the Notice to End Tenancy.

2. The Notice to End Tenancy (to permit compliance with a municipal order) is lawful and valid.

3. The landlord's copy of this decision is accompanied by an Order of Possession to take effect at 1 p.m. on September 30, 2011.

4. The tenants' claim for rent abatement is dismissed without leave to reapply.

5. The tenants' claims for loss of quiet enjoyment are dismissed with leave to reapply.

August 12, 2011