



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNSD, MNDC

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; for return of the security deposit; and, for monetary compensation for damage or loss under the Act, regulations or tenancy agreement.

I heard that the landlords were not served with the tenant's hearing package in a manner that complies with the Act; however, the landlord that appeared at the hearing confirmed the landlords wished to proceed with this matter. The landlord in attendance at the hearing confirmed that the other named landlord was aware of the proceeding and that the landlord in attendance was representing both named landlords. Accordingly, I deemed the landlords sufficiently served under section 71 of the Act and proceeded to hear from the parties.

Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the tenant entitled to return of the security deposit?
3. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
4. Can the parties reach an agreement to resolve their dispute?

Background and Evidence

I was not provided a copy of the written tenancy agreement; however, both parties agreed that the tenancy commenced in April 2010 and the tenant paid a \$329.50 security deposit. The monthly rent is \$659.00 due on the last day of the month.

Notice to End Tenancy

On August 30, 2011 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause (the Notice). The Notice has an effective date of September 30, 2011 and indicates the reason for ending the tenancy is because the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so. The landlord also received a Notice to End Tenancy from the tenant on August 30, 2011 indicating the tenants would be vacating in 30 days.

The tenant disputed the landlord's Notice within the time limit required under the Act. The landlord has not sought an Order of Possession based upon the tenant's notice to end tenancy. Accordingly, I proceeded to hear from the landlord about the landlord's Notice to End Tenancy.

It was undisputed that the landlord issued a letter to the tenants on August 22, 2011 instructing the tenants to remove vehicles and clutter from the property by August 29, 2011 or an eviction notice would be issued. The landlord submitted that the tenants did not comply with the landlord's written notice of August 22, 2011 and the landlord issued the Notice to End Tenancy on August 30, 2011. The tenant submitted that the majority of the clutter did not belong to her and explained that the upper level of the house is rented to others.

I orally set aside the landlord's Notice to End Tenancy during the hearing as I found that, in the absence of a copy of the tenancy agreement, the reason for ending the tenancy was not sufficiently supported by documentary evidence.

The parties proceeded to discuss a mutual agreement to end tenancy. The parties agreed during the hearing that they will meet at the property at noon on October 1, 2011 for purposes of returning possession of the property to the landlord and conducting the move-out inspection.

Security deposit

The tenant requested return of the security deposit. During the hearing, I orally dismissed this request with leave to reapply as I found it premature since the tenancy has not yet ended. Both parties were informed of the landlord's obligation to administer the security deposit in accordance with section 38 of the Act.

Monetary compensation

The tenant indicated three reasons for seeking monetary compensation from the landlords, as described below.

1. In June 2011 the landlord was ordered by a Dispute Resolution Officer to have hydro put in the landlord's name. The tenant received a letter dated July 15, 2011 indicating BC Hydro was going to disconnect the hydro July 22, 2011. The tenant called the landlord's secretary July 21, 2011 to enquire about the status of the hydro account. The hydro was never disconnected.
2. The landlord issued the tenants a Notice to End Tenancy despite telling the landlord that the clutter in the back yard was not theirs.
3. The tenants complained to the landlord three times, in July and August, about a bee hive on the property. The landlord responded by telling the tenants to purchase insecticide and getting rid of the nest themselves. During the summer the tenants' family was stung by the bees and the bees prevented the tenants from cleaning up the back yard. The tenant's husband put mud over the hole to the bee hive in an effort to deal with the bees. The tenant acknowledged that this action diminished the bee problem.

The landlord responded to the bee issue as follows. The landlord acknowledges one complaint by the tenants about bees and the landlord informed the tenants that they should purchase an insecticide from the store. During an abusive interactive with the tenant's son on a later date the tenant's son also mentioned bees; however, during two subsequent visits to the property in late August 2011 the landlord did not get swarmed by bees or stung. The landlord was of the belief the bee issue had been resolved.

Analysis

Upon consideration of the evidence before, I provide the following reasons and findings with respect to each of the issues identified by the tenant in this application.

Notice to End Tenancy

When a Notice to End Tenancy comes under dispute, the landlord bears the burden to show that the tenancy should be ended for the reason(s) indicated on the Notice. When a landlord is ending the tenancy for a breach of a material term of a tenancy agreement I find it reasonable to expect that a copy of the tenancy agreement be provided to demonstrate a breach of a material term. In the absence of a copy of the tenancy agreement, I find the landlord has not met the burden to show the tenants breached a

material term of the tenancy agreement. Therefore, I cancelled the 1 Month Notice to End Tenancy.

Since the tenant stated she is prepared to return vacant possession to the landlord on October 1, 2011 at noon, and the landlord was agreeable to this, I find that by mutual agreement the tenancy ends at noon on October 1, 2011. In recognition of this mutual agreement, I provide the landlord with an order of Possession effective at noon on October 1, 2011 to enforce as necessary.

Security deposit

Section 38 provides for how a security deposit is to be handled by the landlord. The landlord has 15 days after the tenancy ends or the date the landlord receives a forwarding address from the tenant, whichever date is later, to either return the security deposit to the tenant or make an Application for Dispute Resolution. Since the tenancy has not yet ended I find the tenant's request for return of the security deposit to be premature and I dismiss this request with leave to reapply.

Monetary compensation

The tenant identified her request for compensation as being related to pain and suffering. The Act provides that a tenant is entitled to quiet enjoyment of the residential property; therefore, I have considered whether the issues identified by the tenant constitute a breach of quiet enjoyment.

In order to establish an entitlement to compensation for loss of quiet enjoyment the tenant must show that the loss was more than temporary discomfort or inconvenience. Further, pursuant to section 7 of the Act, a person that makes an application for compensation must show that they took reasonable steps to minimize the loss.

1. Hydro – I have determined that on June 23, 2011 a Dispute Resolution Officer issued a decision directing the landlord to continue to provide hydro to the tenants. During the hearing I heard that the hydro was formerly under tenant's son's name and that his account was closed July 8, 2011. I did not hear that the tenants informed the landlord that they had closed their hydro account on July 8, 2011; however, after calling the landlord's office on July 21, 2011 the hydro service continued.

I am satisfied the landlord abided by the order given by the Dispute Resolution Officer upon notification from the tenant that they closed their account. I find the tenant suffered a minor inconvenience of having to call the landlord on July 21, 2011. Therefore, I make no award of compensation for this issue.

2. Eviction notice – Where a tenant receives a Notice to End Tenancy and the tenant is of the position the Notice is not warranted, the tenant's remedy is to dispute the Notice. A breach of quiet enjoyment may be found where a landlord harasses a tenant by repeatedly issuing Notices to End Tenancy.

In this case, this is the first time a Notice to End Tenancy that has been issued to the tenants and I do not find there to be repeated or ongoing harassment by the landlords. Therefore, I make no award for compensation for issuance of a single Notice to End Tenancy.

3. Bee hive – Upon hearing from the parties, I accept that the landlord was verbally informed of a bee's nest on at least two occasions. Pest control is generally a landlord responsibility and I find the landlord took insufficient action to deal with the issue. .

As mentioned previously, in order to establish an entitlement to compensation the applicant must show they took reasonable steps to minimize their loss. In this case, the landlord instructed the tenants to purchase insecticide which the tenants did not do. Nor, did the tenants put their request for the landlord to deal with the bees in writing. I find it reasonable to expect the tenant to either try the insecticide or put the request for extermination in writing for the landlord. Had the tenants' purchased the insecticide I would likely have awarded the tenants the cost of the insecticide and a nominal amount for their time. Therefore, I award the tenant \$25.00 for loss of enjoyment of the yard due to the bee hive.

As the tenancy is about to end I provide the tenant a Monetary Order in the amount of \$25.00 to serve upon the landlords.

Conclusion

The tenancy shall end at noon on October 1, 2011 by mutual agreement. The landlord is provided an Order of Possession to serve upon the tenants if necessary.

The tenant has established an entitlement to compensation of \$25.00. The tenant is provided a Monetary Order in that amount to serve upon the landlords.

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: September 29, 2011.

Residential Tenancy Branch