

DECISION

Dispute Codes OPC, FF, MT, CNC, MNDC, RR, O

Introduction

There are applications filed by both parties. The Landlord has applied for an order of possession resulting from a 1 month notice to end tenancy for cause and recovery of the filing fee. The Tenant has applied to allow for more time to make an application to cancel a notice to end tenancy, cancel a notice to end tenancy, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, recovery of the filing fee and the Tenant has selected the "O", Other box.

Both parties attended the hearing by conference call and have given testimony.

It was clarified with the Tenant that "more time" was not needed as indicated on the application form as both parties agree that the Tenant was served with the notice on September 12, 2011 and that the Tenant filed for dispute on September 22, 2011. I find that more time is not necessary as the Tenant has filed within the allowed 10 days of receiving the notice.

It was further clarified with the Tenant that the selection of the "RR", reduce rent option and the "O", other box options were selected in error. The Tenant has amended his application during the hearing and is only seeking to cancel the notice to end tenancy for cause and seeks compensation lower than the applied amount for \$770.00 for expenses incurred related only to the two structures in dispute. The Tenant is seeking recovery of the filing fee.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on February 1, 2009 on a month to month basis as shown in the submitted copy of the signed tenancy agreement.

Both parties agree that the issues at hand are of the two structures built by the Tenant on the rental property. They consist of an extended deck and an addition of a hot tub structure. Both parties agree that a 1 month notice to end tenancy for cause was served on the Tenant on September 12, 2011. Both parties have confirmed receipt of the other's evidence package.

The Landlord's notice to end tenancy states several reasons. The Landlord claims that the Tenant put the Landlord's property at significant risk because of the deck and the hot tub additions. The Landlord further states that it was discovered that the Tenant has not done the required repairs (deck extension and hot tub addition removal) after being notified. The Tenant disputes this stating that verbal permission was granted by the Landlord to add the two structures. The Landlord disputes that verbal or any written express permission was given to the Tenant. The Tenant has provided a statement from J.V. a former sub-tenant which states, "I also remember Mark giving permission for the deck structure, provided Adam strengthened the supports (still with no timeline given)." The Landlord, M.T.J. disputes this stating that this was after the Tenant already built the deck extension. The Landlord claims that he told the Tenant, if the deck was brought to current building codes that the extension could be accepted, but that he had at no time given him permission to build the deck. The Landlord states that since the deck was not brought up to BC building code and that the Landlord has submitted a letter dated September 20, 2011 from the City of Parksville that the structures were inspected by the City and were found built without a permit and would not meet minimum requirements for the BC Building Code and should be removed. The inspector states, "As such this structure should not be used." The Landlord has also supplied an email from their insurance agent that, "It has recently come to our attention that there may be structures on the premises of 623 Island Hwy. W., Parksville, B.C., that are not in compliance to the BC building code. We will require that these structures are deemed to be safe by a professional building inspector. If these requirements are not met according to the BC building regulations, we will require these structures to be disassembled and removed from the premises." The Tenant disputes the email from the insurance agent stating that they should be excluded because it is not clear what the content is in relation to. Both parties agree that the Landlord removed at his cost, the two structures and left the parts and supplies used on the property for the Tenant.

The Tenant is seeking a claim of \$770.00 for materials used in the deck and hot tub structures because he incurred these costs after permission was given by the Landlord to add these structures. The Landlord disputes the costs as there has never been any express consent for permission to add the deck and hot tub structures. The Tenant has no receipts and is estimating the costs for these expenses.

Analysis

As both parties have attended the hearing and have made detailed reference to the others evidence, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

In the absence of express consent evidence, I find that there is none. I find that the Tenant built both structures without permission and that the Tenant failed to comply with the Landlord's notice to comply and did not remove the structures. I find that the 1 month notice to end tenancy for cause dated September 14, 2011 has been established by the Landlord. The Landlord is entitled to an order of possession and is effective on the date indicated as October 31, 2011. The Tenant must be served with the order of possession. Should the Tenant 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.

As the finding that no permission was given to the Tenant to build the two structures, the Tenant is not entitled to compensation. The Tenant's application for a monetary order is dismissed.

The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord may retain \$50.00 from the security deposit in satisfaction of this fee.

Conclusion

The Landlord's application for an order of possession is granted.
The Tenant's application for a monetary order for compensation of loss is dismissed.
The Landlord may retain \$50.00 from the security deposit.

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: October 19, 2011.

Residential Tenancy Branch