



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 1 Month Notice to End Tenancy for cause; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant has applied for dispute resolution in part to recover from the landlord a \$22,830.00 down payment against an option to purchase contained within the tenancy agreement. That amount was not part of the rent; it was paid to the landlord over and above the amount set for rent. In essence, the landlord acted as a bank for the tenant until the tenant decided to exercise his option to purchase the property. According to the Act, "rent" is defined as money paid by the tenant in return for the right to possess a rental unit. The recovery claimed by the tenant does not constitute rent; it was placed in trust by the landlord with terms and conditions that are attached to the purchase of the home and not the tenancy. This portion of the parties' agreement is not part of the tenancy and I find no power under the Act allowing me to grant the tenant's request. Therefore I dismiss the tenant's monetary claim as I find no jurisdiction under the Act to resolve this aspect of the dispute, and I will only consider the tenant's application to cancel the notice to end tenancy.

The tenant submitted 4 pages of evidence to the Residential Tenancy Branch on the date of the hearing. The tenant's friend stated that it was in response to the landlord's evidence submitted on October 7th, 2011. The tenant had until October 12th and no reasons were provided for submitting evidence on the date of the hearing. The submission of late evidence is a clear violation of the Rules of Procedure. I find that it would be unduly prejudiced to accept this late evidence and therefore it is not considered in my decision. I did however consider the tenant's testimony at the hearing.

Issue(s) to be Decided

Should the Notice to End tenancy be set aside?

Is the tenant entitled to a monetary order, and if so for what amount?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. The tenancy started in 2000, and in 2006 the parties entered into a tenancy agreement with an option to purchase starting on January 1st. According to the agreement, rent started at \$850.00 per month, and the tenant agreed to pay \$1200.00 per month for five years, the difference of which would be used as a down payment if the tenant exercised his option to purchase the property by January 1st, 2011.

In his documentary evidence, the landlord provided a letter from the RCMP dated October 5th, 2011, wherein he was informed that two search warrants were executed at the rental property; one on February 18th, 2011, and another on July 15th, 2011 in relation to an investigation into the possession for the purpose of trafficking under the Controlled Drugs and Substance Act. The letter goes on to report that the searches resulted in the seizure of a significant amount of marijuana, and that as owner the landlord faced the possibility of his home being forfeited under the Civil Forfeiture Act if he continued to allow this type of illegal activity. The landlord testified that the tenant did

not exercise his option to purchase the property and the sale did not go through. He stated that he discovered the police raids at the rental unit through the newspapers, and that he was interviewed by the RCMP in August 2011. He was informed during that interview that his home ought to be forfeited and that he was fortunate to be given a warning. He stated that he watched a segment of the tenant's opinion of the raids on Youtube, wherein the tenant stated that his activities were not illegal, and that he was providing a pharmaceutical service.

The landlord provided a copy of the 1 Month notice to End Tenancy dated September 6th, 2011, with an effective date of October 31st, 2011, served on the tenant for jeopardizing a lawful right or interest of another occupant or the landlord.

The tenant testified that he belongs to a registered non-profit society established in 2000, to which he has provided its members marijuana for medicinal purposes. The tenant stated that the police was aware of this activity, that it was not a problem until February 2011, and that no charges were laid. The tenant said that since the second police raid this activity stopped and therefore the landlord's property is no longer in jeopardy of being forfeited.

The landlord said that he knows the tenant to be a pot user and activist and that his behaviour has been irrational in the past. He stated that at no time did the police tell him that the tenant's activities within the club were ever condoned.

Analysis

Despite the tenant's submissions, I find that the police investigation, their findings on two separate occasions and their subsequent letter were sufficient reasons for the landlord to issue a notice to end tenancy for jeopardizing a lawful right or interest of another occupant or the landlord. The tenant was aware after the first raid that he had to stop supplying marijuana; nevertheless he continued to do so until a second raid took

place 5 months later. For these reasons I find that the landlord's grounds were well founded and that the notice to end tenancy is valid.

Conclusion

The tenant's application is dismissed and the 1 Month Notice to End Tenancy is of full force and effect. The tenancy will end October 31st, 2011.

I grant the landlord an Order of Possession effective no later than 1:00PM, October 31st, 2011.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 18, 2011.

Residential Tenancy Branch