



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPC, FF
Tenants: CNC, MNDC

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and to recover the filing fee for this proceeding. The Tenants applied to cancel a One Month Notice to End Tenancy for Cause dated September 30, 2011 and for compensation for damage or loss under the Act or tenancy agreement.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” I find that the Tenants’ application for compensation for a loss of quiet enjoyment is not sufficiently related to their application to cancel a One Month Notice to End Tenancy for Cause and as a result, that part of their application is dismissed with leave to reapply.

At the beginning of the first day of the hearing, the Parties confirmed that they had been served with the Application, Notice of Hearing and evidence package on the other party and I find that each Party has been served with the respective hearing packages as required by the Act. The Tenants named three parties as Landlords on their application, namely, F.F., L.F. and D.F. I find however that D.F. is not a Landlord as defined by s. 1 of the Act but rather a person who performs maintenance tasks at the rental property on behalf of the Landlords only. Consequently, I find that D.F. is not properly named as a Party in these proceedings and the style of cause is amended by removing him.

At the end of the first day of the hearing, the Parties were advised of the new date, time and dial in code for the reconvened hearing and Notices of the Reconvened hearing containing this information was mailed to each of the Parties on November 3, 2011 however the Tenants did not attend the reconvened hearing. I find that the Tenants had notice of the date and time and means to participate in the reconvened hearing but did not do so and as a result, the hearing proceeded in their absence.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on September 15, 2011 and expires on September 14, 2012. Rent is \$790.00 per month payable in advance on the first day of each month. On September 30, 2011, the Landlords served the Tenants with a One Month Notice to End Tenancy for Cause dated September 30, 2011 by placing it through the mail slot on the rental unit door. The grounds stated on the Notice were as follows:

- The Tenant or a person permitted on the property by the Tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlords said they scheduled a move in condition inspection report with the Tenants for September 15, 2011 however the Tenants claimed they were busy that day and never suggested another date when they would be available. The Landlords said the Tenants wrote on their application for tenancy that they had no pets and did not smoke, however they discovered shortly after the tenancy started that the Tenants had a cat. The Landlords, who live next door to the rental unit, said they could also smell the odour of marijuana coming from the Tenants' unit on a number of occasions and as a result, they asked the Tenants to attend a meeting on September 29, 2011 with the Landlord, F.F., to discuss all of these matters.

The Landlords said the Tenants did not participate in the meeting on September 29, 2011 but instead claimed that they decided not to attend and walked away. The Tenants claim that they were waiting outside the Landlords' office prior to the arranged time for the meeting and were speaking to another tenant in the property when the Landlords' son, D.F., approached them menacingly, advised them that their conversation was over and the meeting with the Landlords was starting immediately. The Tenants said they did not feel comfortable meeting with F.F. while her son, D.F., was present and therefore they did not go through with the meeting. The Tenants said they also refused to do a move in condition inspection because they were told that D.F. would be conducting it.

The Landlord, F.F., said on September 30, 2011 she was standing at the front doors while her son was checking the lock and at that time, the Tenant, B.L. entered. F.F. said she asked B.L. if it would be convenient to do the move in inspection that day, however, B.L. said she did not want to talk to them and "stormed off." The Tenant, B.L. claimed that on September 30, 2011, when she entered the front doors, D.F., began yelling at her so she walked away but D.F. followed her to the rental unit and cornered her at the door. B.L. said that in response to this incident, she contacted the R.C.M.P. who attended that day. D.F. denied that he followed B.L. to the rental unit and cornered her.

The Landlords said that following these incidents, the Tenants refused to have any contact with them and in particular, would not open their door (even if at home) if the Landlords knocked. The Landlords said the Tenants were hostile, would shout at them, slam the door in their face and insisted on being left alone. The Tenants argued that the Landlords served them with the One Month Notice out of retaliation for contacting the R.C.M.P. on September 30, 2011 due to harassment from the Landlords' son.

The Landlords and their son said they often smelled an odour of marijuana coming from the rental unit and received complaints from 2 other tenants of the rental property about it. One of those tenants (V.C.) gave evidence at the hearing that he lives 2 floors up from the rental unit and can smell marijuana coming from the Tenants' balcony below on a regular basis. V.C. said he knows the tenant of the suite directly below him and she does not smoke. V.C. said he did not smell an odour of marijuana until after the Tenants moved in and has seen them smoking it on their balcony. V.C. said the smoke triggers his asthma and affects his quality of life. V.C. said he is also disturbed by the noise of the Tenants fighting.

The Landlords said that they had a witness (A.M.) with them when they served the Tenants with the One Month Notice on September 30, 2011. The Landlords said that 10 minutes later when this witness left their suite, the smell of marijuana coming from the rental unit into the hallway was so strong, that it made her gasp and cough. In a written statement from A.M., she also claimed that on 2 other occasions she was similarly overcome by a strong smell of marijuana emanating from the rental unit. The Tenants denied that they smoked at all in the rental unit and claimed that was because one of them, T.L. was asthmatic. The Tenants denied that they fought frequently but admitted that there was one incident when T.L. had an anxiety attack and B.L. had to yell at her to try to calm her down. The Landlords claim T.L.'s anxiety attacks are frequent and often occur late at night thereby disturbing their sleep.

Analysis

The Landlords said they are seeking to end the tenancy because the Tenants are uncooperative and hostile to them and in particular, refused to have any contact with them to deal with issues such as a move in inspection, an unauthorized pet and complaints from other occupants of the rental property about the smell of marijuana. The Landlords also said they and other occupants of the rental property are disturbed by the smell of marijuana and the noise of the Tenants yelling.

The Tenants denied that they were being uncooperative but claimed instead that they did not feel comfortable dealing with the Landlords' son who was harassing them. The Tenants denied that they frequently argued or yelled and denied that they smoked marijuana.

Where the evidence of the Parties regarding the smell of marijuana coming from the rental unit is concerned, I prefer the evidence of the Landlords. In particular, I found the evidence of F.F. and L.F. to be credible and I note that they live directly next to the Tenants and would have a reasonably opportunity to determine where the smell was emanating from. I also find it significant that the Landlords' witness, V.C., (another tenant of the rental property) could also smell the odour and did personally witness the Tenants smoking on their balcony. Furthermore, the Landlords' witness, A.M., also corroborated the Landlords' evidence on this point that she could smell the odour as soon as she left the Landlords' suite. Although the Tenants argued that they did not smoke because one of them had asthma, they provided no medical or other corroborating evidence this. Consequently, I find that the weight of the evidence suggests that one or both of the Tenants have been smoking marijuana in the rental unit and that the smell has significantly interfered with or unreasonably disturbed the Landlords and other occupants of the rental property.

I also find that the Tenants have been unreasonable in their refusal to deal with the Landlords. Although the Tenants argued that their refusal stemmed from intimidation or bullying by the Landlords' son, D.F., I find that their unwillingness to deal with the Landlords occurred much earlier when they refused to participate or in any way accommodate a move in inspection at the beginning of the tenancy or to speak to the Landlords about an unauthorized pet. I find that the Tenants' refusal to communicate with the Landlords has significantly jeopardized the Landlords' rights and obligations under the Act. In particular, I find that the Tenants' refusal to participate in a move in inspection has serious implications for the Landlords if they are unable to show by other means that the Tenants caused damages during the tenancy. Furthermore, I find that the Tenants misled the Landlords on their application for tenancy about not having a pet and their subsequent refusal to speak to the Landlords about this has serious implications to the Landlords' right to prohibit unauthorized pets or alternatively to require the payment of a pet deposit at the beginning of the tenancy as insurance if a pet causes property damage.

Consequently, I find that there are grounds for the One Month Notice to End Tenancy for Cause dated September 30, 2011 and the Tenants' application to cancel it is dismissed without leave to reapply. Given that the Notice was served by placing it through the Tenants' door slot on September 30, 2011, it is deemed pursuant to s. 90 of the Act to have been received 3 days later or on October 3, 2011. Consequently, pursuant to s. 53 of the Act, the effective date of the notice is amended to November 30, 2011. The Landlords are also entitled pursuant to s. 72 of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding.

Conclusion

The Tenants' application is dismissed. An Order of Possession to take effect on November 30, 2011 and a Monetary Order in the amount of \$50.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenants; the Order of

Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: November 23, 2011.

Residential Tenancy Branch