

DECISION

Dispute Codes OPC, MNDC, O, FF, CNC, OLC, LRE

Introduction

There are applications filed by both parties. The Landlord has filed an application for an order of possession resulting from a 1 month notice to end tenancy cause, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, recovery of the filing fee and an immediate order allowing access to the Landlord to enter the rental unit. The Tenant has also filed an application to cancel the notice to end tenancy for cause, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to suspend or set conditions on the Landlord's right to enter the rental unit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing, it was clarified with both parties that the Realtor's name, R.W. should be removed from the list of scheduled parties as he is a witness and only acts for the Landlord/Owner for the sale of the rental unit. The Realtor otherwise has no participation in the Tenancy. The Witness, R.W.'s name shall be removed from the Tenant's application.

An interim decision was made regarding the Landlord's request for immediate access to be given to the Landlord to enter the rental unit and the Tenant's request to suspend or set conditions on the Landlord's right to enter the rental unit. In that interim decision dated November 4, 2011, it was found that the Landlord was complying with the Act and that the Tenant has unreasonably prohibited access to the rental unit. Both parties were informed during the hearing that the Tenant is to comply with the Act and that the Landlord was given access to the rental unit upon the Tenant being properly served under the Act.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to an order cancelling the 1 month notice to end tenancy for cause?

Is the Landlord entitled to a monetary order for compensation for damage or loss?

Is the Tenant entitled to a monetary order for compensation for damage or loss?

Background and Evidence

Both parties have attended the hearing and have acknowledged receiving the hearing and evidence package of the other party.

The Landlord states that the Tenant was served with the 1 month notice to end tenancy for cause dated October 18, 2011 on October 18, 2011 by posting it on the rental unit door. The Tenant has acknowledged receiving the notice and has applied to cancel the notice. The Landlord states that the Tenant has refused access to the unit for sale for showings in writing in the form of email during the week of October 10, 2011. The Landlord has provided a copy of an email dated October 12, 2011 from the Tenant stating, "...that you are no longer allowed access to our residence... This takes effect immediately." The Tenant has acknowledged that this is an email that they sent to the Landlord. The Landlord has included video on two separate occasions where the Tenant was properly given notice and prohibited from entering the rental unit to have a showing. The Tenant claims that the Landlord's Realtor has severely and repeatedly disturbed the Tenant's quiet enjoyment. The Tenant states that the realtor has scheduled approximately 38 showings over a 5 month period. The Tenant's dispute is that the Landlord's Agent, R.W. the realtor, has given 12 notices of showings where the Tenant had to prepare the rental unit for showing and make sure that one of the Tenants was present. The Tenants states that of these 12 showings the Landlord's agent failed to attend or call any warnings of non-attendance. The Landlord's witness has stated that "no shows" are common and frequent in showing realty. The Tenant, Z.L., states that he works from home and is inconvenienced when there are "no shows". The Tenant has provided numerous email communication and states that the realtor failed to cancel some of the scheduled showings when prospective buyers did not attend.

The Landlord has made a monetary order request for compensation of \$25,000.00. The Landlord relies on a letter from his realtor, R.W. which states that the Landlord is losing market value each day that the Tenants are blocking the showings with prospective purchasers. The realtor states that the sales price was reduced previously by \$15,000.00 from August to September. The letter states that the real estate market slows down traditionally in November and that the realtor advises the Landlord that the property will need to be reduced by a further \$10,000.00. The Landlord considers these "hard losses". The Tenant disputes this stating that the realty market prices fluctuate and are very subjective. The Landlord states that there was a offer made that was accepted for \$337,500.00 (from the original listing price of \$354,000.00) that was subject to keeping the Tenants as renters for the new owners. The Landlord states that this sale failed because there is a limited number of rentals allowed by the strata and this condition was refused by the Strata Council. The Tenant further disputes that the

Landlord has not yet suffered any losses as there has been no sales or offers that failed because of the Tenants.

The Tenant has made a monetary order request for \$4,999.00 in compensation for loss of quiet enjoyment. The Tenant states this amount is divided between the three individuals (The two tenants and their son) living at the rental. The Tenants state that the Landlord has failed on approximately 12 occasions to communicate with the Tenant when showings would be cancelled. The Tenant claims that this led to a disturbance in their quiet enjoyment of the rental and that the non-appearances became harassment by the realtor. The Landlord disputes this stating that there is no requirement for the Tenants to be present during the showings and that it was recommended by the realtor that they not be present. The Landlord states that it was the choice of the Tenants to be present. The Tenants state that the realtor was unscrupulous and that that they did not feel safe with their residence being unattended. The Landlord disputes this. The Tenant was not able to provide any evidence of concern requiring their attendance for the showings. The Tenants state that the two of them have spent at least 100 hours each in preparation for this dispute and should receive compensation.

Analysis

As both parties have attended the hearing and have given detailed reference to the evidence submitted by the other, I am satisfied that each party has been properly served with the notice of hearing and evidence packages.

The Landlord's notice dated October 18, 2011 gives two reasons for cause in ending the tenancy. The first reason given is that a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so". Neither party has submitted a copy of the signed tenancy agreement or a copy of the written notice that the Landlord has failed to establish his claim under this reason listed on the notice. The Landlord has failed to provide any other details for this reason. This portion of the Landlord's claim is dismissed. The second reason listed is "Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park." On this reason, I find that the Landlord has failed to establish their reason for cause. The Landlord only makes reference in his documentary evidence to an occasion where there was a showing by the realtor where the Tenant called the police stating that his residence was being broken into. It further states that after the police assessed the situation that the Tenant was advised to allow access for the realtor to have the showing and that police would not be attending. I find that the Landlord has failed to provide any evidence that a prospective Tenant/Purchaser was given any false information about the rental unit. As such, I find that the Landlord's application for an order of possession has failed. The notice dated October 18, 2011 is set aside and the Tenancy shall continue.

The Landlord's application for a monetary claim for \$25,000.00 is for compensation. I find that as the property has not yet been sold that this claim is premature as no actual loss has occurred. The realtor's opinion of loss is exactly that, an opinion. I find that until a sale has been completed that the Landlord has failed to establish a claim for this amount. Further, the Landlord would have to show that any loss would be through the negligence of the Tenant. I find that the Landlord's application for compensation is premature and dismiss it with leave to reapply.

The Tenant's application for a monetary claim of \$4,999.00 in compensation for loss of quiet enjoyment has not been established. I find that the monetary claim amount is not based on any losses as the Tenant is unable to provide any evidence for this specific amount. Although the Tenants did suffer an inconvenience through poor communication regarding the sales showings being cancelled, the Tenants have failed to provide how approximately 12 showings that normally last 10-15 minutes each would entitle them to this claim.

Conclusion

The notice dated October 18, 2011 is set aside and the tenancy shall continue.
The Landlord's claim for a monetary order is dismissed with leave to reapply.
The Tenant's claim for a monetary order is dismissed.

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 08, 2011.

Residential Tenancy Branch