



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, MNDC, OLC, LRE, RR, O

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order that the landlord provide services or facilities. The tenant had amended his application on November 17 to include numerous other claims. Both parties participated in the conference call hearing.

In a written letter submitted before the hearing and orally at the hearing, the tenant requested an adjournment. He claimed that he had not met with an advocate until 6 days before the hearing at which time he amended his claim and that he would be unable to provide all the evidence he required without additional time. He further stated that no advocates were available to assist him at the hearing on this date. The landlord strenuously objected to an adjournment.

In considering a request for an adjournment, I must take into account a number of factors, including whether the purpose for which the adjournment is sought will contribute to the resolution of the matter, whether the adjournment is required to provide a fair opportunity for a party to be heard, the degree to which the need for the adjournment arises out of the intentional neglect of the party seeking the adjournment and the possible prejudice to each party.

In this case, the tenant made his application on November 4 but did not seek the assistance of an advocate until almost 2 weeks later and less than one week prior to the hearing. The tenant was unable to offer a reasonable explanation for the delay in seeking assistance. The tenant indicated that the additional evidence and assistance of the advocate was required to address the claims he added on November 17. The landlord stated that he would be out of the country for an extended period beginning on December 8 and wished to have the matter resolved prior to his departure.

I found that the reason the tenant required an adjournment was due to his own delay in seeking assistance from an advocate and the fact that he wished to make a number of additional claims which were unrelated to his claim for an order setting aside the notice

to end tenancy. I found that the prejudice to the landlord was significant, as it was likely the hearing would have to be adjourned to some point in the new year.

As the purpose for which the adjournment was sought was to address the additional claims and because the tenant caused the delay and the landlord would be significantly prejudiced I denied the request for an adjournment.

Rule 2.3 in the Residential Tenancy Rules of Procedure permits a Dispute Resolution Officer to dismiss unrelated claims in a single application. I found that the claims made in the amendment made on November 16 were unrelated to the claim for an order setting aside a notice to end this tenancy and as the tenant was unprepared to advance those claims, I dismissed those claims with leave to reapply.

Issue to be Decided

Should the notice to end tenancy be set aside?

Should the landlord be ordered to provide services or facilities?

Background and Evidence

The parties agreed that on November 1, 2011, the tenant was served with a one month notice to end tenancy for cause (the "Notice"). The Notice alleged that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The rental unit is accommodation on the upper floor of a residence which the tenant shares with 2 other parties. The tenant has exclusive use of a bedroom and shares the bathroom, kitchen, living room and other common areas with other occupants. The landlord, who stated that he does not own the home, resides in a self-contained unit on the lower floor of the residence.

The landlord testified that the tenant has caused disturbance to the other occupants as well as to himself by making noise late at night and in the early hours of the morning, particularly by watching television, speaking loudly and cooking loudly. The landlord provided letters from the other occupants in which they stated that they had been disturbed by the tenant several times each week when the tenant created excessive noise after 2:00 a.m. The landlord also stated that the tenant left exterior doors open which permitted heat to escape and kept a stolen shopping cart in the yard.

The tenant testified that he typically arrives home after midnight and that the noise he makes is not unreasonable. He claimed that it was not possible to make a significant amount of noise when cooking because he owns just one pot and one pan. He claimed

that the only reason the landlord and other occupants were disturbed by him was because the walls were paper thin. Much of the tenant's testimony addressed a litany of complaints against the landlord including frustration that there was insufficient heat, an inoperable washing machine, that the landlord was too friendly with the tenants and cooked for them and that he accessed the common areas unnecessarily.

Analysis

The tenant is sharing living accommodations with 2 other occupants in a home that was not designed to offer absolute privacy or the type of soundproofing between rooms that would be expected in an apartment complex. Because of this situation, neither the tenant nor the other occupants can expect the same degree of freedom from disturbance as would occupants of separately demised living areas. The tenant and other occupants must also recognize that their own activities may have to be somewhat curtailed in order to ensure that others are not unreasonably disturbed.

Although the tenant has claimed that he was not unreasonably noisy, I accept the evidence of the landlord that the other occupants were disturbed as well as the landlord, who lived on the floor below. The tenant did not dispute the authenticity of the written statements from the other occupants and I accept them at face value. I further accept that the tenant had repeated warnings from the landlord that the noise he made upon entering the unit in the early hours of the morning was excessive and I find that the tenant chose to continue the same activities rather than adjust his schedule, cooking habits or volume on his television. I find on the balance of probabilities that the tenant has unreasonably disturbed the other occupants and the landlord and I dismiss the application to set aside the Notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Because the Notice was served in November, it is not effective to end the tenancy until December 31, 2011 and I order that the tenancy end on that date. 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 tenancy will be ending, I find it unnecessary to address the claim for an order that the landlord provide services or facilities.

Conclusion

The tenant's claims made on the initial application dated November 4, 2011 are dismissed. The additional claims made on the amended application dated November 17 are dismissed with leave to reapply. The landlord is granted an order of possession.

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