

Decision

Dispute Codes: MT, CNC, LAT, FF / OPC

Introduction

This hearing was convened in response to an application by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for cause / authorization to change the locks to the rental unit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony. During the hearing the landlord made an oral request for an order of possession.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on February 1, 2011. Monthly rent of \$950.00 in addition to \$25.00 towards utilities is payable in advance on the first day of each month. A security deposit of \$475.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause dated October 21, 2011. The notice was served in person on the tenants on that same date. A copy of the notice was submitted into evidence. Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

On October 27, 2011 the tenants filed an application for dispute resolution, one aspect of which sought to have the notice set aside. On October 31, 2011 the tenants filed an amended application. As the tenants filed their application within the 10 day period available to them to dispute a notice following service, there is no requirement that they apply for more time to make an application to cancel a notice to end tenancy.

These parties previously attended a hearing on May 3, 2011. That hearing was scheduled in response to an application by the tenants to have a 1 month notice to end tenancy for cause dated March 23, 2011 set aside. In the decision issued by date of May 3, 2011, the dispute resolution officer found in part as follows:

...I find it necessary to cancel the One Month Notice. However, the tenant is cautioned that this decision will serve as a warning and the tenant is now aware that if any boisterous conduct is repeated, it could function as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act. In cancelling this Notice, I encourage the parties to communicate in written form in regards to tenancy-related concerns and to retain copies of all communications.

The parties exchanged views during the hearing around some of the concerns giving rise to the dispute, however, their efforts to achieve a resolution were not successful. It is noted that the tenants were inclined during the hearing to be argumentative. As well, the tenants frequently talked over the landlord and the landlords' witnesses and were repeatedly asked by me to await their turn.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Policy Guideline # 32 addresses “Illegal Activities,” and provides in part, as follows:

The term “illegal activity” would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord’s property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the dispute resolution officer and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

Based on the documentary evidence and testimony of the parties, I find that while the landlord is suspicious about the legality of certain of the tenants’ activities, the landlord has failed to prove on a balance of probabilities that the tenants have actually engaged in any illegal activities. Accordingly, the landlords’ application for an order of possession on this ground is hereby dismissed.

In relation to the tenants’ alleged failure to comply with a material term, in the decision issued by date of May 3, 2011, the dispute resolution officer noted, in part, as follows:

The tenant is not permitted pets because of the strata restrictions and has agreed not to keep any pets.

The tenants testified that they formerly kept two cats, but that they presently keep no pets on site. The tenants acknowledge that the cats occasionally visit them in the unit,

but the landlord stated that visits by pets are not prohibited. The parties presented conflicting perspectives in regard to the frequency of visits to the unit by the pets. Based on the documentary evidence and testimony, I find that the landlord has failed to prove on a balance of probabilities that the tenants have breached a material term of the tenancy by virtue of the presence of cats on site. Accordingly, the application for an order of possession on this ground is hereby dismissed.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Evidence submitted by the landlords includes a range of allegations made by other residents and owners about the tenants which include, but are not necessarily limited to, "openly shouting and swearing outside of their suite," "slamming of doors," "erratic driving," "violation of strata parking rules," "suspicious activity," "stomping, yelling," "screams and shouting," "tires squealing loudly" and so on. These activities have allegedly been on-going subsequent to the last hearing and the decision issued on May 3, 2011. The landlords' resulting interaction with the tenants includes a hand delivered letter to their unit dated September 20, 2011, in which the concerns are broadly summarized. Despite this, the landlord testified that other residents and owners have continued to experience "unreasonable disturbance" as a result of the tenants' conduct and behaviour.

Based on the documentary evidence and testimony, I find that the landlords have proven on a balance of probabilities that the tenants or persons permitted on the residential property by them, have adversely affected "the quiet enjoyment, security, safety or physical well-being" of other occupants of the residential property. Accordingly, I find that on these grounds the landlords have established entitlement to

an order of possession. The tenants' application for cancellation of the notice to end tenancy is therefore dismissed, as are the aspects of the tenants' application concerning authority to change the locks to the rental unit and recovery of the filing fee.

Section 55 of the Act speaks to **Order of possession for the landlord**, and provides in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Conclusion

The tenants' application is hereby dismissed in its entirety.

I hereby issue an **order of possession** in favour of the landlords effective not later than **1:00 p.m., Saturday, December 31, 2011.** This order must be served on the tenants. Should the tenants 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.

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*.

DATE: November 21, 2011

Residential Tenancy Branch