



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, LRE, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The female tenant (the tenant) confirmed that she and the male tenant received the landlords' 1 Month Notice posted on their door on October 14, 2011. At the second hearing, the landlords' counsel entered into evidence a copy of that Notice.

The landlords' counsel confirmed that the landlords received copies of the tenants' dispute resolution hearing package sent by the tenants by registered mail on October 29, 2011. However, the landlords' counsel said that the landlords did not receive this for some time and only forwarded this package to him on November 10, 2011. The tenants attempted to submit new written evidence at the first hearing on November 14, 2011, but had not provided a copy of this evidence to the landlords beforehand.

Since I accepted that the landlords had not been given an adequate opportunity to respond to the case against them and there seemed no compelling reason why the landlords' counsel's request for an adjournment would negatively impact the tenants, I adjourned this hearing to a time to be set later. I did so in order to allow the parties an opportunity to ensure that their evidence was considered by the other party.

The hearing reconvened on December 2, 2011, at which time two of the three landlords were able to attend with their counsel. One of the two tenants, the female tenant, returned for the reconvened hearing. At the reconvened hearing, the landlords' counsel requested an Order of Possession if the tenants' application to cancel the 1 Month Notice were dismissed.

At the reconvened hearing of December 2, 2011 and with permission of the parties in attendance, I amended the spelling of the landlords' names and the address of the rental unit on the tenants' application to reflect the correct spelling and the correct addresses set out above.

Issues(s) to be Decided

Should the tenants' application to dismiss the landlords' 1 Month Notice be allowed? If the tenants' application were dismissed, should the landlord be issued an Order of Possession? Are the tenants entitled to a monetary award? Should any orders be issued to the landlords? Are the tenants entitled to recover their filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and receipts, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' application and my findings around each are set out below

Although both parties agreed that a residential tenancy agreement was created for this tenancy, neither side entered into written evidence a copy of this agreement. This tenancy commenced on July 15, 2011. There are no disputes as to the tenants' payment of their rent on time for their rental unit in the lower portion of this two unit rental property.

At the second hearing, the landlords' counsel entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenants to end this tenancy by November 14, 2011 (corrected at the hearing to November 30, 2011), the landlords cited the following reasons for the issuance of the Notice:

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;*

- *put the landlord's property at significant risk.*

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

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

At the hearing, the landlords present (the landlords) stated that the illegal activity cited in their 1 Month Notice referred to the male tenant's smoking of marijuana in the rental unit and on the premises. Landlord RD testified that the landlords had told the tenants that they could not smoke on the premises, although she admitted that the residential tenancy agreement, not entered into written evidence, did not prevent smoking on the premises. The tenant said that the male tenant had a legal document that allowed him to smoke marijuana for medicinal purposes, although she did not enter a copy of this document into written evidence. She also said that she asks the male tenant to not smoke in the rental unit or on the property and that he tries to smoke while walking the dogs.

The landlords' counsel entered oral and written evidence from the landlords in attendance at the second hearing regarding the noise and disturbance caused by the male tenant on an ongoing basis. Both landlords present testified that they have attended the property a number of times to deal with the upstairs tenants' complaints about the noise and foul language being used by the male tenant. Landlord RD testified that she has heard these episodes of loud and foul language and said that this situation has continued since the landlords issued the 1 Month Notice. Although the landlords' counsel entered written evidence from one of the tenants who moved into the upstairs part of this rental property at the beginning of October 2011 late, the tenant said that she received a copy of this letter in advance of this hearing and had no objection to the late submission of this evidence. The landlords' counsel said that the tenants were available to participate in the hearing by telephone conference call if that became necessary to confirm the issues of concern about noise, the tenants' dogs and smoking that the upstairs tenants outlined in their letter submitted into written evidence. The tenant said that there was no need to call the upstairs tenants as she had no doubts that they would confirm what they had written in their letter entered into evidence.

The tenant admitted that the male tenant does yell at her from time to time. She said that he is taking different pills to try to cope with his temper, but sometimes acts like an "ass."

The landlords' counsel also presented oral and written evidence regarding the safety concerns that the tenants and the landlords have about the oldest of the four dogs that the tenants keep on the property. The oldest of these dogs, a Rotweiler was described by Landlord RD as being very aggressive. She said that the male tenant told this dog to "sic her" when she was working on the outside of the property one day. The upstairs tenants also expressed serious safety concerns in their letter about this dog, especially when the lower tenants use the common areas of the laundry room and the shared garage as their doghouse. The upstairs tenants have young children and have concerns about their safety and that of their children whenever they try to enter the common areas and this dog is present. The tenant testified that the oldest of the Rotweilers is a trained guard dog and is protective of territory that she considers to be hers until she becomes used to people. She said that the upstairs tenants have not given this Rotweiler the opportunity to get used to them.

The tenants also applied for a monetary award of \$2,500.00. When asked to explain the application for a monetary award, the tenant said that this resulted from the landlords' tardiness in returning a mail key to them. She said that although the tenants asked a number of times to have this key provided to them, they did not receive it for three weeks. This led to the tenants missing bills that were sent to them, causing late fees to be applied against them. The tenants entered written evidence of these bills. She said that the remainder of the monetary claim was for the stress that dealing with the landlords has caused them.

The remainder of the tenants' claim for orders to the landlords rely on a continuation of this tenancy.

Analysis – Tenants' Application to Cancel the Landlords' 1 Month Notice

Based on the evidence presented, I advised the parties at the hearing that I was not satisfied that the landlords demonstrated that the male tenant's smoking of marijuana on the rental property constituted an illegal activity that enabled the landlords to end this tenancy on that basis. Similarly, I rejected the landlords' counsel's claim that the male tenant's smoking of marijuana on the property put the landlord's property at significant risk.

Based on a balance of probabilities, I find that the male tenant's conduct has significantly interfered with or unreasonably disturbed other occupants of the residential property and that the tenants have jeopardized the lawful rights of other tenants in the rental property, such as their right to quiet enjoyment of the premises. There is considerable evidence, which was not disputed by the female tenant, that there is frequent yelling and swearing by the male tenant that is heard on an ongoing basis in

the other rental unit. I also find that the tenants' use of the common area for their dogs, particularly the oldest of these dogs, a guard dog, also jeopardizes the lawful rights of the upstairs tenants and the landlords. I find that the incidents involving the oldest of the Rotweilers outlined by the landlords and the written evidence from the upstairs tenants present serious safety concerns for a continuation of this tenancy. The tenant admitted that this trained guard dog is territorial and protective over areas that she considers to be hers and has accessed common areas of the rental property. I find that this potentially dangerous dog combined with a male tenant who would seem to have challenges controlling his outbursts is not a safe combination for other tenants in this building, particularly when they have young children. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice.

Analysis – Landlords' Oral Request to End to this Tenancy and obtain an Order of Possession

Section 55(1) of the *Act* reads as follows:

- 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.*

Since I have dismissed the tenants' application to cancel the 1 Month Notice, I find that this tenancy has ended and issue the landlords an Order of Possession.

At the hearing, I asked the parties to discuss the timing of this Order of Possession, as both parties recognized that it will take some time to relocate the tenants and their four dogs to a new residence. After hearing oral evidence from both parties, I advised the parties that I find that this tenancy ends by 1:00 p.m. on January 15, 2012, by which time the tenants must have vacated the rental unit. I do so in order to allow the tenants time to find alternate accommodation.

Analysis – Remainder of Tenants' Application

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss

under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the evidence presented by the tenant at the hearing and in the tenants' written evidence, I find insufficient basis to find that they are entitled to a monetary award. They did not send any written requests to the landlords regarding any of the concerns that gave rise to their application for a monetary award. I find that the tenants' failure to receive bills does not entitle them to a monetary award from the landlords to compensate them for their late payment of these bills. An alleged three week lack of access to mail would not have affected bills that would appear to have developed over a significant period of time. The tenants also produced no evidence from a health care practitioner to support the tenants' assertion that their interactions resulting from this tenancy caused them stress for which they are entitled to a monetary award from the landlords. For these reasons, I dismiss the tenants' application for a monetary award without leave to reapply.

The remainder of the tenants' applications would seem to be contingent on a continuation of this tenancy. As the tenants provided insufficient evidence to support their requests for a series of orders against the landlords and because this tenancy will soon be ending, I dismiss the tenants' applications for these orders without leave to reapply.

As the tenants' claims have been dismissed, they are not entitled to recover their filing fee for this application from the landlords.

Conclusion

I dismiss the tenants' application to cancel the landlords' 1 Month Notice without leave to reapply. At the hearing, the landlords' counsel requested an Order of Possession if the tenants' application for cancellation of the 1 Month Notice were dismissed. The landlords are provided with a formal copy of an Order of Possession effective by 1:00 p.m. on January 15, 2012. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the remainder of the tenants' application without leave to reapply.

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: December 02, 2011

Residential Tenancy Branch