



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on or about May 1, 2011. The rental unit is a single bedroom in a home in which the tenant shares common areas with 5 other tenants. The landlord resides at least part-time in a self-contained suite on the upper floor of the home.

On or about November 28, the landlord served on the tenant a one month notice to end tenancy for cause, alleging that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided copies of letters he received from another tenant, K, in which K complained that the tenant was verbally abusive, disparaging of her country of origin and had thrown a laundry basket at her. The tenant testified that K had confirmed to her that she had authored the letters and denied having been abusive or having thrown the laundry basket.

The landlord provided a copy of a letter authored by another tenant, T, in which T complained that the tenant was bully, intimidating, volatile and highly confrontational. The tenant questioned why the letter was not signed, but did not appear to dispute that it had been authored by T and generally denied the accusations therein.

The landlord provided a copy of a letter from another tenant, R, in which she claimed that the tenant had threatened her by saying, "If we ever cross paths ..." without finishing the sentence. The tenant testified that she had complained to the landlord about R. In an email sent prior to the time she received the notice to end tenancy and that she had complained that R. Had threatened to kill T. and had repeatedly been rude to her.

The landlord provided an email from D, the landlord's guest who had spent the night in the residence, in which he stated that the tenant challenged why he was putting food in the refrigerator and asked him theological questions in a bullying and demeaning fashion. The tenant testified that she did not know that he was a guest of the landlord and testified that although she initiated the conversation about theological issues, she thought he was proselytizing.

The landlord had a number of other complaints, including that the tenant was extremely aggressive toward him, yelling at him frequently, and on one occasion telephoned the police when he tried to enter the common area of the home. The tenant testified that it was her understanding that the landlord could not enter the home at all without providing written notice. She claimed that the landlord had harassed her by leaving notes for her and on one occasion accusing her of using his fax machine. The tenant submitted evidence showing that the landlord later withdrew this allegation.

The tenant seeks an award of \$25,000.00 which she has broken down as follows. Return of the entire amount of rent paid during the rental period because she lost quiet enjoyment of the unit; \$5,000.00 in compensation for comments made by another tenant; \$10,000.00 for defamation of character by the landlord; and \$6,275.00 in moving and increased living expenses should the notice to end tenancy be upheld.

Analysis

It was clear at the hearing that the tenant misunderstood her rights under the Residential Tenancy Act as she was convinced that the landlord was not permitted to enter any part of the home without written permission. The tenant does not have exclusive possession of the entire residential property; rather, she is renting a single bedroom with rights to access common areas. The Act places no restrictions whatsoever on landlords accessing common areas and when the landlord has reserved part of the residence for his exclusive use as is the case in this situation, it is unreasonable to expect that the landlord will not access common areas. The tenant went so far as to call the police on one occasion in attempt to bar the landlord from entering the unit. I find her actions to be extreme and unreasonable. Although she did not understand her rights at the time, she easily could have received information about

those rights by telephoning the information line at the Residential Tenancy Branch, but she chose not to do so. I find that this action alone is sufficient to found the landlord's action to end the tenancy.

Further, I accept that the tenant has been unnecessarily combative with other tenants. Although the tenant claimed that she did not engage in the activities that the other tenants accused her of, she offered no explanation as to why those tenants would write letters of complaint if she were innocent of their accusations. I further find that the tenant's behaviour toward the landlord's guest was inappropriate at best, particularly as she was the one who initiated a theological discussion.

I find on the balance of probabilities that the tenant has significantly interfered with and unreasonably disturbed other occupants and the landlord has the right to end the tenancy. Accordingly I dismiss the tenant's claim for an order setting aside the notice to end tenancy.

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. 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.

Turning to the tenant's monetary claim, I find that I have no jurisdiction to hear the claim for defamation as that jurisdiction lies exclusively with the Supreme Court, nor do I have jurisdiction to hear her claim for compensation arising from statements made by other tenants as I only have authority to hear disputes between landlords and tenants.

As the landlord has established grounds to end the tenancy, I find that the tenant's claim for moving expenses must also fail as her actions led to the ending of the tenancy.

As for the claim for loss of quiet enjoyment, I find that the confrontations with the landlord have largely been initiated by the tenant or have occurred as a result of the tenant's interactions with the landlord or other tenants. Although the landlord wrongly accused her on one occasion, I note that he rectified the situation when he withdrew his accusation. I find insufficient evidence to show that the actions of the landlord have caused the tenant to lose quiet enjoyment of the unit and accordingly I find that the claim must fail.

Conclusion

The claim is dismissed in its entirety and 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: December 16, 2011

Residential Tenancy Branch