



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC; FF

Introduction

This Hearing was scheduled to hear the Tenants' application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued November 10, 2011; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

The female Tenant did not sign into the Hearing. Throughout this decision where the word "Tenant" is used, it means the male Tenant.

The Landlord's agent confirmed receipt of the Notice of Hearing documents on November 19, 2011. I accept the Landlord's agent's undisputed testimony that the Tenant was served with the Landlord's documentary evidence on November 23, 2011, by personal service at the rental unit.

I note that neither party had provided a copy of the Notice in evidence. Both parties testified that they had provided it: the Tenant testified that he provided a copy to the Residential Tenancy Branch when he filed the Tenants' Application; the Landlord's agent testified that he believed he had provided a copy of the Notice to the Branch when he filed his evidence package on November 24, 2011. Both parties wished to proceed, and I allowed the Landlord to send me a copy of the Notice by fax. After receiving a copy of the faxed Notice, I read the contents to the parties. The Tenant confirmed that it was the Notice he was seeking to cancel and the Hearing proceeded.

Issue(s) to be Decided

- Should the Notice be cancelled or upheld?

Background and Evidence

The Landlord's agent gave the following affirmed testimony:

The Landlord's agent testified that he served the Tenant with the Notice on November 10, 2011, by handing the Notice to the Tenant at the rental unit.

The Landlord's agent testified that the Tenant has vandalized 4 cars in the secure underground parking lot at the rental property, which belong to other occupants or owners in the rental property. The Landlord's agent gave the following chronology of events:

- The tenancy was to begin on December 20, 2010, but the Tenant was provided early possession of the rental unit. The Tenant was assigned parking stall number 103 and was provided with an electronic fob for the secure areas of the rental property.
- On December 18, 2010, the person assigned to parking stall 88 ("A") found she could not park in her stall because the Tenant had parked there. She noticed that parking stall 87 was vacant, so she parked in stall 87. The person assigned to parking stall 87 ("B") arrived to find A's car parked in his stall so he called a tow truck to remove her vehicle. A returned to her car at the same time that the tow truck arrived and explained the situation to the tow truck driver. The tow truck driver towed the Tenant's car away. The Tenant picked up his vehicle at the impound lot and paid the towing charges of \$104.61. A copy of the invoice was provided in evidence.
- On December 19, 2010, A and B found their cars had been vandalized with multiple dents. Photographs of the vandalized cars were provided in evidence.
- On December 24, 2010, A found her car vandalized with the words "don't park here" scratched into the paint on both sides of her vehicle. Photographs of the vandalized car were provided in evidence.
- On December 30, 2010, A found her vehicle vandalized again with both the front and back windows smashed in. Photographs of the damage were provided in evidence. She moved out of the condo shortly thereafter and the owner of the that condo moved in ("C").
- On April 9, 2011, C found her vehicle vandalized with "don't park here" scratched into the paint of her vehicle.
- A, B and C have all filed police reports with respect to the vandalism, but the police said there was insufficient evidence to prove that the Tenant had vandalized their cars.
- C re-rented her condo and a new occupant ("D") was assigned to parking stall 88. On August 14, 2011, D returned to his car to find "don't park here" scratched into the paint of his car. He made a report to the police.
- After the incident of August 14, 2011, the strata corporation installed extra security cameras which were specifically pointed towards stalls 87, 88 and 89.
- On October 2, 2011, in the evening, D found his vehicle vandalized again. Paint had been scratched off on the driver's side. D made a report to the police. The video tape from the surveillance camera was viewed. At 2:56 p.m., October 2, 2011, the video camera captured the Tenant approaching the vehicle from

behind, looking behind him, raising his arm and walking back past the driver's side of D's vehicle parked in parking stall 88 with an object in his hand. The Landlord provided a copy of the relevant video footage and a written statement from D in evidence. The written statement indicates that D viewed the video tape and that on November 17, 2011, he saw the Tenant park his car in stall 103 and waited for him to get out of his car, and walked with him to the elevator. D wrote that he had a good look at him and then viewed the video footage again. D wrote that the Tenant is the same man that he saw on the video tape. The written statement from D indicates that the cost to repair his vehicle will be \$2,297.01.

- On November 7, 2011, the police advised the Landlord, after viewing the video footage, that they would be proceeding with criminal charges against the Tenant as they felt they now had enough evidence.

The Landlord also provided written statements from A and B in evidence.

The Landlord's agent testified that, in addition to the video footage, there is other evidence that the Tenant was responsible for the vandalism. The Landlord provided 16 fob reports (electronic statements), which show the date and time a fob is used on the rental property to gain access to the secured doors, and which also shows the identification number of the fob used. These reports show that the Tenant's fob was used to access the parking garage at the material times on October 2, 2011. The Landlord's agent state that Tenant has not reported that his fob was stolen. He also stated that there are more than 15,000,000 combinations of numbers that can be used to identify a fob and that only one fob was registered to the Tenant.

The Landlord's agent asked for an Order of Possession. He stated that the male Tenant had filed his application using his nick name as his first name and asked that the Order of Possession reflect the Tenant's legal name as well.

The Tenant gave the following affirmed testimony:

The Tenant testified that the Landlord does not want to evict him and that the strata corporation was pressuring the Landlord to do so.

The Tenant denied vandalizing the cars and stated that there was insufficient evidence to prove that he had. The Tenant testified that he saw a dog or a person in D's vehicle and that he was just walking over to D's vehicle to have a look inside when the video captured him on October 2, 2011.

The Tenant testified that his car was also scratched and that he had been a victim of vandalism.

The Tenant stated that he has not yet been charged by the police for any offence.

Analysis

This is the Tenant's application to cancel the Notice and in this situation, the onus is on the Landlord to prove on the civil standard, **the balance of probabilities**, that the tenancy should end for the reasons given on the Notice. The Notice indicates that the Landlord seeks to end the tenancy because the 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; and jeopardize a lawful right or interest of another occupant or the Landlord.

The Tenant testified that the Landlord did not want to evict him, but the Landlord confirmed that it was his signature on the bottom of the Notice and that he had issued it on November 10, 2011.

I viewed the video tape that was provided in evidence and I do not find the Tenant's submission that he was looking inside D's vehicle to see a dog or a person on October 2, 2011, to be credible. I find it is more probable that he was looking behind himself when approaching the vehicle to ensure that no one was watching and that he purposefully scratched D's vehicle. A copy of the General Occurrence Report from October 4, 2011, was provided in evidence. It indicates that the report is "founded, not cleared" for an offence of "mischief \$5,000 or under".

I find, on the balance of probabilities, that there is sufficient proof that the Tenant did vandalize the other occupants' cars, taking the totality of the evidence into consideration: the towing bill; the written statements; the photographs; the video tape; the fob reports; and the Police Occurrence Report. Based on the documentary evidence provided, I find that these illegal actions have adversely affected the quiet enjoyment of other occupants in the rental property. Therefore, I find that the Landlord has provided sufficient evidence to end the tenancy for reasons indicated on the Notice.

Section 55(1) of the Act states:

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.

I am satisfied that the Tenant received the 1 Month Notice to End Tenancy on November 10, 2011. I find that the effective date of the end of the tenancy is December 31, 2011 and that the Landlord is entitled to an Order of Possession **effective 1:00 p.m., December 31, 2011.**

I have amended the Tenants' application to include the legal name of the male Tenant.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., December 31, 2011.** This Order must be served on the Tenant and 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*.

Dated: December 15, 2011.

Residential Tenancy Branch