



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDC, FF, MT, O

Introduction

This matter dealt with an application by the Tenants to cancel two Notices to End Tenancy one for unpaid rent and one for cause. As well the Tenants applied for monetary compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding, for more time to make this application and for other considerations.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 6, 2012. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel one or both of the Notices to End Tenancy?
2. Is there a loss or damage to the Tenants and if so how much?
3. Are the Tenants entitled to compensation for the loss or damage and if so how much?
4. Do the Tenants need more time to make this application?
5. What other considerations are there?

Background and Evidence

This tenancy started on September 1, 2011 as a fixed term tenancy with an expiry date of August 31, 2012. Rent is \$4,995.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$2,497.50 on June 30, 2011 and a pet deposit of \$2,497.50 on June 30, 2011.

The Landlord said he served the Tenants a 1 Month Notice to End Tenancy for Cause dated December 16, 2011. The Landlord said his reasons were that he believed the Tenants had breached the tenancy agreement and significantly interfered with or unreasonably disturbed the Landlord by parking in the Landlord’s parking stall.

The Tenants said they believed that they had an agreement with the Landlord to use the parking stall when he was not using it. Both parties's submitted emails and evidence supporting their position with regards to the parking stall.

The Landlord said he served the Tenants with 10 Day Notice to End Tenancy on January 1, 2012 by posting it on the door and the Tenants said they received the 10 Day Notice to End Tenancy on January 3, 2012 when they returned from a trip. The Effective Vacancy Date on the Notice is January 10, 2012. The amount of unpaid rent on the Notice is for the January, 2012 rent of \$4,995.00. The Landlord said the Tenants had informed him that they had cancelled their post dated rent cheques and were not going to pay the rent for January after they received the 1 Month Notice to End Tenancy date December 16, 2011. The Landlord continued to say he requested payment of the rent from the Tenants in cash or a bank draft and that he did not want the January, 2012 rent paid by cheque. When the Landlord did not receive the January, 2012 rent of \$4,995.00 he issued a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord closed his opening remarks by requesting an Order of Possession as soon as possible if the Tenants' application is unsuccessful.

The Tenant said they chose not to pay the January, 2012 rent because they believed the Landlord was not going to return their security and pet deposits, which total \$4995.00, at the end of the tenancy. The Tenants told the Landlord he could use the security and pet deposits as payment for the January, 2012 rent and they would move out of the unit on January 31, 2012. The Tenants submitted into evidence a Mutual End of Tenancy Agreement signed by them agreeing to move out of the rental unit on January 31, 2012. The Tenants continued to say the Landlord did not agree to this agreement and he did not sign it. As a result the Tenants made this application to cancel the 2 Notices to End Tenancy and to request compensation of \$4,995.00 for their moving costs and for a security deposit on a new rental unit. The Tenant said they did not provide any evidence or proof by way of receipts or invoices for the costs that they will incurred due to the eviction notice.

The Tenants said the other issues on their application of more time to make the application and other considerations are not material now and they are withdrawn.

Analysis

It is apparent from the testimony and the evidence that there are issues between the parties. The Landlord issued an eviction notice and the Tenants' suggested a mutual agreement to end this tenancy, but the Landlord did not accept the proposal. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because the Landlord or another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. The Landlord has not provided evidence or testimony that established grounds to prove that the parking issue **unreasonably** disturbed and **seriously** interfered with the Landlord. I accept the Landlord may have been inconvenienced, but the inconvenience does not meet a level to warrant an eviction.

Further for an issue to be considered a material term of the tenancy agreement it must be substantive enough that it could stop the parties from entering a tenancy agreement at the start of the tenancy. It appears the dispute over the parking stall did have an arrangement for the first three months of the tenancy and it did not stop the parties from entering the tenancy agreement. Therefore I find the parking issue is not a material breach of a tenancy agreement. Consequently, I order the 1 Month Notice to End Tenancy dated December 16, 2011 to be cancelled as it does not meet the level of severity to establish grounds for an eviction notice and I find the Tenants did not breach a material term of the tenancy agreement.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent section 26(1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the Tenants do not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenants have not established grounds to be granted an order to cancel the Notice to End Tenancy for Unpaid Rent. The Landlord's 10 Day Notice to End Tenancy dated January 1, 2012, stands in effect. Further, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of the Notice on the Tenants.

In regards to the Tenants' monetary claim; for an applicant to be successful with a monetary claim the applicant must prove a loss actually existed, the loss or damage was solely because of actions or neglect of the respondent in violation of the Act or the agreement, the loss or damage must be verified and there must be proof that the applicant took steps to mitigate or minimize the loss or damage. In this situation the

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Tenants said they are requesting a monetary claim for moving expenses, for funds for a new security deposit and for other cost that they may incur due to being evicted. I find that the Tenants have not established grounds that prove a loss actually exists, they have not provided any receipts or invoices to verify the amount of loss or damage and they have not proved the loss or damage is solely a result of the Landlord. In fact the cause of the eviction is that the Tenants did not pay the rent for January, 2012. Consequently I dismiss the Tenants' monetary claim for \$4,995.00 as the Tenants have not proven a loss or damage actually exists.

As the Tenants were unsuccessful in this matter I order that they bear the cost of the filing fee for this proceeding of \$50.00 that they have already paid.

Conclusion

I grant an order to cancel the Notice to End Tenancy for Cause dated December 16, 2011.

The Tenant's application to cancel the Notice to End Tenancy for unpaid rent dated January 1, 2012 is dismissed without leave to reapply.

The Tenants' monetary claim of \$4,995.00 is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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*.

Dispute Resolution Officer