Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenants have applied to cancel a Notice Ending Tenancy for Cause and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the tenants requested an adjournment. The tenants stated they had not had adequate time to prepare for the hearing and that the Canadian Charter of Rights and Freedoms, Article 15, provides the legal authority to adjourn the matter.

The tenants submitted that they wished to hire a company in Vancouver to complete transcripts of telephone conversations, and that this required more time. The tenants did not explain how transcripts of telephone conversations would aid them in the hearing; no details of conversations were provided. The tenants also wished to submit photographs, showing progress made on the property, but did not have sufficient time to do so.

The landlord objected to an adjournment; they submitted they are not in a position to delay any further, as they face legal action.

I declined to adjourn the application; the tenants received the Notice ending tenancy on February 20, 2012; they applied to cancel the Notice on the 10th day after receiving the Notice. I find that they had sufficient time to take photographs and submit that evidence for a March 23, 2012, hearing, as provided by the Rules of Procedure. The tenants were informed they could provide testimony in relation to any telephone calls they had

wished to have transcribed; however, they did not do so. The tenants made no evidence submissions; outside of a copy of the Notice ending tenancy.

I explained that the Rules of Procedure section 11.1 which sets out the order of presentation in a hearing; when a tenant applies to cancel a Notice ending tenancy the landlord presents their case first; as they have the burden of proving the reasons the tenancy should end, based on the details of the Notice. A Notice ending tenancy does reverse the onus of proof to the tenant.

Issue(s) to be Decided

Should the 1 Month Notice Ending Tenancy for Cause issued on February 20, 2012, be cancelled?

Are the tenants entitled to filing fee costs?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants were required to vacate the rental unit on March 21, 2012.

The reasons stated for the Notice to End Tenancy were that the tenants have:

- seriously jeopardized the health or safety or lawful interest of the landlord;
- put the landlord's property at significant risk;
- engaged in illegal activity that has, or is likely to:
    - adversely affect the quiet enjoyment, security, safety or well-being of another occupant;
    - damage the landlord's property;
    - jeopardize a lawful right or interest the landlord;
- caused extraordinary damage to the property; and
- have not done required repairs to the unit.

The tenancy commenced in August 2005; the parties agreed that a move-in condition inspection report was completed, but neither had a copy available. Rent is $1,600.00 per month, due on the first day of each month. A security and pet deposit in the sum of $600.00 each were paid. The tenants rent a house on a double lot in a residential area of Squamish.

The landlord stated that there is a written tenancy agreement but they did not believe it was in force due to past tenancy issues. The terms of the tenancy were discussed and confirmed; the parties agreed that the male applicant is also a tenant.

The landlord provided a submission in relation to the tenant's failure to comply with Orders issued by the District of Squamish. The landlord and tenants confirmed receipt of the following correspondence from the District of Squamish:

- December 15, 2011 letter which set out:
    - The rental property had become unsightly due to accumulation of vehicles, boats, storage containers, building and household debris, overgrown with blackberries;
    - That a request had been made that the tenant keep things tidy and belongings clear and free from District Property and that the tenants had failed to do so;
    - That the tenant's belongings were encroaching on District Property posing a public safety risk and must be immediately removed;
    - That responsibility for action lies with the property owner;
    - That the property owner must clean up the property no later than January 16, 2012; and
    - That a failure to comply with this Order would result in a "Show and Cause" hearing before the District of Squamish Council who could order compliance and costs charged to the property owner.

The tenants, landlord and bylaw officers met on January 17, 2012; no noticeable rehabilitation of the property had taken place.

On January 18, 2012, a letter was issued to the tenants and landlord; a copy was hand-delivered to the tenants. The matter was referred to a District of Squamish counsel meeting where the parties would have an opportunity to speak; at which point counsel members could order the property be cleared with costs assigned to the property owners. However; the landlord was given an extension to February 17, 2012.

The February 17, 2012, deadline for clean up was not met by the tenants and on February 20, 2012, the male tenant, the landlord and by law enforcement officer met and a further extension was granted by the District of Squamish to March 6, 2012.

On February 20, 2012, a District of Squamish Notice of Violation was issued to the tenants; a copy was supplied as evidence. The Notice indicated that the bylaw related to unsightly premises was being violated and provided a compliance date of March 6, 2012; at 5 p.m., with an inspection date of March 7, 2012.

The landlord was told she and the tenants were jointly and severally liable for costs, should compliance not occur. On February 20, 2012, the landlord issued the Notice

ending tenancy, as the tenants had failed to meet the requirement imposed by the District of Squamish and the landlord's lawful rights were now in jeopardy.

On February 21, 2012, a letter was issued to the male tenant by the District of Squamish, thanking the tenant for meeting with staff the day prior. The letter confirmed meeting to discuss the steps required to remedy the situation and to set compliance deadlines. The tenants were given specific direction as to what needed to be removed from the property by March 6, 2012. Photographs were given to the tenants, and supplied as evidence, in support of the District's position. The letter warned legal action was becoming likely but that staff were ready to provide advice and direction and assistance to reach compliance. However, the letter also indicated fines could be levied against the landlord if compliance was not achieved.

On March 6, 2012, by law enforcement staff determined that the property continued to be in an unacceptable state and a further delay for compliance was provided to March 13, 2012; which was followed by a further delay in compliance to March 22, 2012; the day prior to the hearing.

On the morning of March 23, 2012, the District of Squamish sent the landlord an email and indicated they had talked with the male tenant the day prior and had told him they must proceed to court. The tenant was told that the property owners will be named in the court action. The email noted that improvements had been made to the property, but compliance had not been achieved. The bylaw officer asked the landlord if they had legal counsel.

During this time the landlord stated she made many attempts to talk with the tenants; they did not answer their phone and their voice mail box was always full. The tenants had been copied with the correspondence from the District of Squamish and were fully aware of the need to rehabilitate the property. The tenants were informed of their responsibilities throughout the process and met with the landord at the by law enforcement officers office.

The landlord called the Residential Tenancy Branch for advice and was told she could not enter the property to remove items that belonged to the tenants. The landlord became very frustrated as the District of Squamish staff were warning her that legal action was likely, due to the failure of the tenants to comply with their orders. The landlord stated they now require access to the property so she can bring it into compliance and new occupants located.

At the start of the tenancy the landlord had offered to remove the blackberry bushes but the tenant had indicated she wished to harvest the fruit. The landord then left the bushes in the care of the tenants.

The tenants did not dispute receipt of the correspondence, violation notice or any of the extension dates provided by the District of Squamish by law enforcement staff. The tenants argued that since December 15, 20111, they had made significant

improvements to the property and that they were being held responsible for blackberry vines and tree debris that should be removed by the landlord. The tenants confirmed that they cared for the black berry bushes at the front of the property; but that bushes toward the back of the property had not been cleared by the landlord at the start of the tenancy and that this area was not their responsibility.

The tenants submitted that the Notice should not be of force as they have come very close to full compliance with the orders issued by the District of Squamish and that their efforts to rehabilitate the property have not been recognized. The tenants had wished to supply photographs showing the improvement they had made to the property.

Copies of all referenced documents were supplied as evidence. The landord supplied a schedule of possible fines that could be imposed up to $300.00 per day, plus penalties.

Analysis

The tenants have applied to cancel a Notice ending tenancy for cause issued on February 20, 2012; the effective date of the Notice was March 21, 2012. In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants have seriously jeopardized the lawful interest of the landlord. I find that the landlord has proven, on the balance of probabilities that the tenants have also engaged in illegal activity that has jeopardized the landlord's lawful rights or interest.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued and relevant sections of the legislation.

Black's Law Dictionary, 6th edition, defines jeopardy, in part, as:

> *" the danger of conviction and punishment which the defendant in a criminal action incurs when a valid indictment has been found…."*

Section 32(2) of the Act provides:

> *(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

I find that receipt of letters and the Notice of Violation from local government authorities is beyond the usual or average outcome when a landlord rents out a property. The

landlord has the right to expect that tenants will abide by local ordinances and not place the landlord's lawful interests or rights in jeopardy. A tenant must maintain the property to the standard required by local government and I find a failure to do so has placed the landlord's lawful interest in jeopardy. The landlord is now faced with legal action and penalties and cannot rely upon the tenants to adhere to agreed-upon extensions of time to comply.

The local government has been more than patient; providing written Notices on December 15, 2011; delayed compliance dates of January 6; February 18; March 6; 13 and 22, 2012. Despite every intention of the local government to assist by providing delayed enforcement; the tenants continued to fail to adequately respond by complying with their warnings and the violation order issued on February 20, 2012.

I find that the landlord issued the Notice ending tenancy at the point the violation order was issued as the local government was now taking steps to enforce the bylaws as the result of the tenant's failure to meet their obligations by complying with written direction previously given.

After the Notice ending tenancy was given the tenants were provided with 3 additional extensions to comply and they failed to meet any of those. I have rejected the tenant's submissions that the Notice should be cancelled as a result of the progress they have made toward compliance. I have considered the situation that existed at the time the Notice was issued and the fact that despite warnings and letters, the tenants failed to comply.

I have also rejected the submission that the back berry bushes were the responsibility of the landord. Generally tenants are responsible for yard maintenance during a tenancy. I have determined that the landlord allowed the black berries to remain on the property at the request of the tenant, who then failed to properly maintain the bushes. Further, from the evidence before me the most significant number of items that required removal was equipment that clearly belonged to the tenants.

Section 55(1) of the Act provides:

> ***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 have dismissed the tenant's Application to cancel the Notice; the landlord stated they want to access the property so that they may bring it into compliance and locate new

occupants. I find this is the equivalent of requesting possession; therefore, as the tenant's application is dismissed, I have issued the landlord an Order of possession for the earliest date as provided by the Act; March 31, 2012.

Conclusion

As I have determined that the landlord has submitted sufficient evidence to establish that she has grounds to end this tenancy pursuant to section 47 of the Act, I dismiss the tenant's application to cancel the 1 Month Notice Ending Tenancy for Cause, issued on February 20, 2012.

The landlord has been granted an Order of possession that is effective **March 31, 2012, at 1 p.m.** This Order may be served on the tenants, filed with 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: March 26, 2012.

Residential Tenancy Branch