



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MT, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy, and for compensation for damage or loss under the Act, regulations or tenancy agreement.

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

At the start of the Hearing the Dispute Resolution Officer informed the parties that the application is to contest a Notice to End Tenancy for Cause and the monetary claim by the Tenant is a separate and unrelated dispute to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenants’ monetary claim is dismissed with leave to reapply.

Issues(s) to be Decided

1. Are the Landlords entitled to end the tenancy?

Background and Evidence

This tenancy started on July 24, 1994 as a one year fixed term tenancy and then continued as a month to month tenancy. Rent is \$2,014.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$750.00 on July 24, 1994.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 25, 2012 with an effective vacancy date of February, 2012. He served the Notice on January 25, 2012 in person to the Tenant.

The Landlord said there were two reasons for serving the Notice to End Tenancy for Cause. He said the first reason is the Tenants have been uncooperative in the emergency repairs to the property, which resulted from a flood in the basement in October, 2010. The Landlord’s agent said their insurance company indicated to them

that if emergency repairs were not completed in a timely manner the insurance coverage may not extend to further claims resulting from damage from the flood including mold clean up and other health risks to tenants or occupancy. The Landlord's agent said this put their property at significant risk as the Tenants would not clear their belonging out of the basement so the restoration work could be completed. The Landlord's agent continued to say that they had submitted copies of emails that show they had advised the Tenants of the urgency of this situation. He also said they had submitted emails from the Tenants that showed they refused to cooperate. The Landlord's agent read the Tenants' email of November 25, 2010 saying "won't happen merry Christmas" which the Landlord's agent said was a response by the Tenants to an email from the Landlord of November 24, 2010 requesting "remove belongings". The Landlord's agent said they had a number of copies of emails requesting the Tenants to remove their belongings so that restoration work could be completed.

The Landlord's agent continue to say the second reason they issued the Notice to End Tenancy for Cause was the Tenants had installed a hot tub and electrical panel box for the hot tub without permission from the Landlord. The Electrical panel box was done without a permit and was not inspected. The Landlord's agent said this made the panel box illegal and potentially unsafe as it may be a fire hazard. The Landlord's agent said the work done on the electrical system in the house by the Tenant has put the Landlord's property at significant risk.

The Landlord's agent asked for an order of possession if the Tenant's application is not successful. He requested the effective vacancy date to be as soon as possible or on December 31, 2010 the effective vacancy date on the Notice to End Tenancy.

The Tenant said the Landlords caused the flooding problem by not installing and maintaining the sump pump correctly. He said the previous dispute resolution decision dated November 23, 2010 found in his favour and shows the Landlord is in the wrong. As well, the Tenant said the Landlords have been harassing him and his family, which he believes is to force them to move out so that the Landlord can rent the property for more money. He said the Landlord is making up these claims to force his family out of the rental unit.

The Tenants said there are no emergency repairs required as the house is drying out and the Landlord has overstated the problem again to force the Tenants out of the rental unit. He said as he sees no emergency repairs are needed they have not moved their belonging out of the basement and have not complied with the Landlords' requests. The Tenants continued to say that they do not have the money to move their belongings and they do not believe their insurance will cover the costs. The Tenant's wife said that she had asked the Landlords if they could do the repairs in pieces so that

the Tenants would not have to move out of the house while the repairs were being completed. She said the Landlord said no to this request.

The Tenant continued to say that he had told the Landlord about the hot tub and the electrical panel prior to put the tub in the backyard and he said the Landlord agreed to it. As a result the Tenant said the Landlord cannot use it as cause to evict the Tenants as he agreed to the hot tub installation. The Tenant also said that a licensed electrician put the hot tub and electrical panel in, but there were no permits or inspections of the electrical work done.

The Landlord said that he did not know anything about the hot tub or electrical panel until after it was installed and he told the Tenant on a number of occasions to remove the hot tub as he believed the 100 amp service to the house could not handle the hot tub's electrical requirements in a safe manner.

The Tenant said they have been excellent tenants for over 16 year and have never missed a rent payment and they have done many improvements to the property. The Tenants said they do not want to leave their home.

Analysis

Section 47 (1) (d) say that a landlord may end a tenancy if the landlord gives a notice to end tenancy for a number of reason which include that the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

There was much contradictory testimony given and conflicting evidence submitted. The Landlord established his claim about the need for emergency repairs by his testimony regarding the insurance coverage and written evidence from the Insurance Company. The Insurance Company approved the claim for damages and indicated the Tenants must remove their belonging before any work could begin. As well, the Landlord established that his insurance may not cover future claims if the emergency repairs were not completed in a timely manner.

Secondly the Landlord and the Tenant agree that the Tenants installed an electrical panel box connected to the existing electrical service in the house for the use of a hot tub. The Tenant said that there were no permits take out for the electrical work and there was no inspection of this electrical installation. The Tenant said a certified electrician did the work, but he provided no evidence to establish this. The Landlord said the electrical panel box installed by the Tenant is unsafe and illegal and as such is a significant risk to his property.

Residential Tenancy Branch
Office of Housing and Construction Standards

I find that the Landlord has established grounds for his Notice to End Tenancy for Cause dated November 30, 2010 in that the Tenants' have not cooperated in the emergency repairs of the unit by not removing their belongings so work could be done. This has put the Landlord's property at risk. As well I find, the Tenants have created a safety hazard to the Landlord's property by installing an illegal electrical panel box in the house. This too, has put the Landlord's property at significant risk. Consequently I dismiss the Tenants' application to cancel the Notice to End Tenancy and the Landlord will receive an Order of Possession for the rental unit with a possession date of December 31, 2010 as indicated on the Notice to End Tenancy dated November 30, 2010.

Conclusion

I dismiss the Tenant's application to cancel the Notice to End Tenancy for Cause dated November 30, 2010 without leave to reapply.

An Order of Possession effective December 31, 2010 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession 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