Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNDC, FF / CNC, MNDC, OLC, RP, RR, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; ii) by the tenants for cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony. While the landlord's request for an order of possession is not included in the original application, during the hearing the landlord orally confirmed the wish to obtain an order of possession pursuant to issuance of a 1 month notice to end tenancy for cause.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the original 6 month fixed term of tenancy was from February 1 to July 31, 2011. Thereafter, tenancy continued on a month-to-month basis. A move-in condition inspection report was completed on February 1, 2011.

Monthly rent began at $1,100.00 but, subject to a notice of rent increase effective February 1, 2012, rent is presently $1,147.00. Rent is payable in advance on the first day of each month, and a security deposit of $550.00 was collected. No pet damage deposit was collected and the tenancy agreement provides that no pets are permitted.

The landlord issued a 1 month notice to end tenancy for cause dated February 27, 2012. The notice was served in person on February 29, 2012. Subsequently, the tenants amended their original application for dispute resolution to include application to have the notice set aside. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is March 31, 2012, and reasons shown on the notice for its issuance are as follows:

> Tenant or a person permitted on the property by the tenant has:
>
> > seriously jeopardized the health or safety or lawful right of another occupant or the landlord
> >
> > put the landlord's property at significant risk
>
> Tenant has caused extraordinary damage to the unit/site or property/park
>
> Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

At the outset, the attention of the parties is drawn to section 32 of the Act which speaks to **Landlord and tenant obligations to repair and maintain**:

> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> > (a) complies with the health, safety and housing standards required by law, and
> >
> > (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> (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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on the documentary evidence and testimony of the parties, the multiple aspects of the respective applications and my findings around each are set out below.

ORDER OF POSSESSION

The grounds identified for issuance of the 1 month notice appear to relate almost exclusively to concerns around the tenants' pets. The tenants acknowledge that they presently own 1 dog, 2 cats and 2 caged rodents. They claim that when their tenancy began, the agent representing the landlord (not the current agent) orally consented to their keeping of pets, even while no pet damage deposit was collected. The tenants also claim that other residents in the building own pets. The landlord testified that residents who are permitted to own pets are able to do so because their tenancies began prior to the introduction of a no pet policy. While the landlord stated that she had witnesses who would testify to the existence of smells coming from the unit which allegedly derive from pet-related unsanitary conditions, there is no documentary evidence of complaints from other residents about smells or the tenants' pets. Further, it appears that the landlord's agent has been aware of the presence of at least one these pets (the dog) for approximately one year, but has only recently addressed the matter of the "Dog and Cat" formally in writing by letter dated February 16, 2012.

There is an absence of evidence related to what oral consent, if any, the previous agent for the landlord may have given the tenants in regard to their keeping of pets. Further, even if oral consent had been given, there is an absence of evidence associated with what particular pets the tenants had at the start of tenancy, and which pets exactly the previous agent had knowledge of. Further, it is not clear whether the tenants have acquired additional pets following the start of their tenancy.

As for the aspect of the tenancy agreement which prohibits pets, as earlier noted, it appears that the landlord's agent previously had knowledge of the tenants' dog; to what extent she was aware of other pets kept by the tenants is not clear. In any event, where

it concerns the dog at least, the prohibition against pets does not appear to have been strictly enforced by the landlord's agent. It is arguable that by not enforcing the prohibition against pets, the landlord has implicitly consented to possession.

In summary, I find on a balance of probabilities that the landlord has not met the burden of proving grounds sufficient to end the tenancy. Accordingly, the 1 month notice to end tenancy is hereby set aside, and the tenancy continues in full force and effect.

However, the landlord has clearly identified concerns about the condition of the unit. In this regard, statutory provisions related to the landlord's right to inspect a unit are set out in section 29 of the Act, which addresses **Landlord's right to enter rental unit restricted**, and provides in part:

> 29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

LANDLORD: **MONETARY CLAIMS**

$2,302.72: *carpet replacement;*
$525.00: *painting of ceiling, walls & doors;*
$164.52: *paint & related supplies;*
$434.56: *replacement of blinds;*
$151.20: *junk removal;*
$80.00: *cleaning of parking stall;*
$320.00: *cleaning of unit interio;*.

$110.00: *cleaning supplies;*
$1,147.00: *loss of 1 month's rental income.*

The landlord testified that, without exception, none of the above costs have presently been incurred, and that all of these costs are merely only anticipated after such time as this tenancy ends. Accordingly, as the subject tenancy has not presently ended and as none of these costs has actually been incurred, all of the above aspects of the application are hereby dismissed with leave to reapply at some future date.

$300.00: *parking fees (12 months x $25.00).* The tenancy agreement is silent on any specific provision of parking, and opposite the cost of "Parking or Other" on the tenancy agreement, "0" is manually noted. However, a small notation on the bottom left hand corner of the second page of a 2 page move-in condition inspection report makes a reference to "Parking 2." On the face of it, this appears to indicate that 2 parking stalls are assigned to the unit and that, for whatever reason (perhaps no car ownership, for example), monthly parking fees were not assessed or agreed to at the start of tenancy.

Evidence submitted by the landlord includes a "parking agreement" with another tenant, pursuant to which that tenant pays $25.00 per month for a particular parking stall. This agreement was entered into in April 2011, and to be effective May 1, 2011; it appears, therefore, to have been entered into after the date when the subject tenancy began.

Further, this particular aspect of the dispute appears to have arisen, in part but not exclusively, from the tenants' possession of up to 5 different vehicles, not all of which have been licensed or fully functional at all times.

In summary, while I find there is limited evidence before me in support of the provision of parking for 2 vehicles, there is no conclusive evidence before me of any agreement between the parties concerning a monthly fee for parking, or any notice to the effect that a fee for parking will be assessed to all residents who wish to actually make use of a parking stall. Accordingly, this aspect of the application is hereby dismissed.

$100.00: *filing fee*. As the landlord has not succeeded with this application, the application for recovery of the filing fee is hereby dismissed.

TENANTS: MONETARY CLAIMS

$400.00: *cost of "lost food" arising from alleged cockroach infestation.* The parties have submitted conflicting evidence in relation to the existence of cockroaches. The tenants take the position that the building is infested with cockroaches, while the

landlord takes the position that if cockroaches are present, they are limited to the tenants' unit. Further, the landlord takes the position that if there are cockroaches in the unit, they are the result of the unsanitary conditions.

I find that there is insufficient evidence of "lost food" costs incurred by the tenants as a result of the alleged existence of cockroaches. However, I also find that the landlord has not conclusively determined the status of cockroaches in the building or the subject unit in response to allegations by the tenants. Specifically, there is no evidence of a professional assessment of this concern having been undertaken. Accordingly, pursuant to section 32 of the Act, as above, I hereby order the landlord to have a professional pest control assessment undertaken in regard to the alleged existence of cockroaches in the building, including this unit, by not later than March 31, 2012.

$600.00: *total rent reduction ($200.00 for each of December 2011, January & February 2012).* This aspect of the application arises mainly out of the allegations concerning cockroaches and an improperly functioning elevator. Cockroaches have been addressed above.

As to the elevator, I find that there is insufficient evidence to support the allegation that the tenants have suffered in any way from its operation. Accordingly, this aspect of the application is hereby dismissed. However, pursuant to section 32 of the Act, as above, I hereby order the landlord to have a professional assessment of the building elevator undertaken by no later than March 31, 2012.

$1,000.00: *lost value in vehicle minus scrapping value.* I find that this aspect of the application reflects little more than the deteriorating relationship between the parties. In summary, I find that there is insufficient evidence to support the existence of any lost value or, in any event, any responsibility on the part of the landlord for such lost value. This aspect of the claim is therefore dismissed.

$3,000.00: *compensation for homophobic behaviour and harassment.* The attention of the parties is drawn to section 28 of the Act which speaks to **Protection of tenant's right to quiet enjoyment,** as well as to Residential Tenancy Policy Guideline # 6 which addresses "Right to Quiet Enjoyment." In short, while there are clearly tensions between the parties arising from miscellaneous matters in dispute, I find there is insufficient evidence of a breach of the right to quiet enjoyment. This aspect of the application is therefore dismissed.

As to specific allegations of “homophobic behaviour and harassment,” the parties have the option of addressing such concerns to authorities whose responsibility is to assess, and to investigate alleged abuses of human rights.

$50.00: *filing fee*. As the tenants have achieved limited success with their application, I find that they have established entitlement limited to $25.00, which is half the filing fee. I order that the tenants may recover this amount by way of withholding $25.00 from the next regular payment of monthly rent.

Conclusion

The notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

The landlord’s application is hereby dismissed.

I hereby order the landlord to have a professional pest control assessment undertaken (and treatment(s), if required) in the building, including the subject unit, by no later than March 31, 2012.

I hereby order the landlord to have a professional assessment of the building elevator undertaken (and servicing, if required) by no later than March 31, 2012.

I order that the tenants may withhold $25.00 from the next regular payment of monthly rent in order to recovery half the filing fee for their application.

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 12, 2012.

Residential Tenancy Branch