

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This hearing was convened in response to joint applications filed by both parties.

The landlords seek an Order of Possession based on a Notice to End Tenancy for Cause and recovery of the filing fee paid for this application.

The tenant seeks to cancel the Notice and also seeks recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter, the tenant being represented by her agent.

Issue(s) to be Decided

Has the landlord met the burden of proving cause to end this tenancy?

Background and Evidence

This tenancy began on November 15, 2011 for a fixed term ending November 15, 2012 following which time the parties chose that the tenancy would revert to a month-to-month tenancy. The rental unit is a basement suite in the home of the landlords and the landlords live upstairs.

On February 20, 2012 the landlords served a 1 month Notice to End Tenancy for Cause under Section 47 of the Act. The effective date on the Notice is April 15, 2012. In that Notice the landlords state that they are wishing to end this tenancy for the following reasons:

47 (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

47 (d) the tenant or a person permitted on the residential property by the tenant has

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlords stated that the tenant is aware that there is a problem in the house with the breaker being tripped. The breaker is located in the tenant's suite and because of the difficulties in this regard the parties stated in the addendum to the Tenancy Agreement that the tenant agrees:

...to let the Landlord to enter the suite for Maintenance of Furnace and reset the Electrical panel switches at short notice for the efficient running of the systems (this will NOT be considered an inspection)

(reproduced as written)

The landlords say that despite her agreement the tenant refuses to allow the landlord access as agreed.

Further, the landlords say the tenant also agreed in the addendum to obtain insurance to cover liability, loss of personal effects and incidental/accidental damages and to provide proof of such insurance to the landlords within the first month of her tenancy. The landlords say the tenant has failed to provide proof of insurance. This is of a particular concern to the landlords because they landlords/tenants share a common entrance area in the home. The landlords say the tenant has a coat rack in this common area where she leaves personal belongings and she has failed on numerous occasions to lock the front door when she leaves the home. The landlord has counted 26 occasions in which the front door was left unlocked by the tenant. The landlord has written to the tenant to tell her to ensure she locks the door at all times but she has not complied with this request.

The landlord says also that there is a sliding glass door entry into the tenant's suite which is secured with a security rod but the knob on the rod is now missing and the rod no longer provides security.

The landlord says the tenant has jammed a bed up against a door which is secured with a deadbolt and which door is intended as an additional exit in the event of a fire.

The landlords say they believe their property and their own safety to be in significant danger as a result of the tenant's conduct.

With respect to the coat rack the landlords say it is full with coats, helmets, shoes and there is also an umbrella stand. The landlords have asked the tenant to remove this unit into her suite but she has not done so. The tenants say they did not agree for the tenant to use this area for storage and they are unable to store their own coats, etc. in this area because the tenant continually leaves the door unlocked. Further the tenants, who are senior citizens, returned home one evening and were unable to easily open the door to gain entry because there were too many items on the coat rack which were hampering their ability to open their door.

The landlords say the tenant was required to pay a \$675.00 security deposit and a \$325.00 pet deposit within 30 days as required by the Act. The tenant initially provided a cheque for \$1,000.00 but the cheque was issued with the landlord's name written incorrectly. The landlords returned the cheque to the tenant and asked for a replacement. The landlord says the tenant issued three post-dated cheques without their permission for \$400.00, \$400.00 and \$200.00 the last payment of which was being made after the 30 day time limit. The landlords did accept the payments as they were given feeling they had no choice if they wished to receive the necessary deposits.

The landlords testified that the tenant was given permission to have a bike shed, a patio table and chairs in the outdoors area of the property but since she moving in she has accumulated other goods such as a kayak. The landlords say they have asked the tenant to remove these goods but she has not done so.

The landlords testified that the tenant works out of town 3 weeks of the month and leaves her 18 year old daughter and 11 year old daughter at home alone. The 18 year old works and is rarely home to care for the 11 year old.

The landlords say the tenant has 2 cats instead of the one cat she is allowed to have.

Agent for the tenant says he cannot dispute what the landlords are saying however he believes the tenant only leaves the door unlocked when she runs out to get something out of her car.

With respect to proof of insurance agent for the tenant says the tenant does have insurance and has provided proof of payment for insurance to show the landlords that she has insurance. Agent for the tenant submitted that the tenant is likely not providing her insurance documentation as required under a misguided belief that she is protecting her privacy which she believes is being invaded as a result of the landlord's numerous inspections.

Agent for the tenant agrees that the tenant works in Vanderhoof 3 weeks out of the month but says that her eldest daughter is 19 and well able to look after the 11 year old while the tenant is out of town. Agent for the tenant says she is likely going to be looking for new accommodation having secured a permanent job out of town.

Agent for the tenant says he believes something could be worked out to get rid of the coat rack in the communal hall way and the goods outside.

Agent for the tenant believes there may be a second cat which the daughter wanted to keep.

The landlords pointed out that the parties were in a previous hearing a few weeks ago and things were left to be "worked out" and this has not happened.

Analysis

The landlords are seeking to end this tenancy for cause. The tenant disputes that the landlords have cause to end this tenancy. The tenant did not appear at the hearing but was represented by her agent.

She does not deny accumulating goods outside the house. She does not deny that she has a coat rack in the entry way which is stacked with her belongings. She does not deny that there are 2 cats. She does not deny that she leaves her two daughters without her supervision in the rental unit for weeks at a time.

When taking all of these issues into consideration together and adding the landlords' evidence, which I prefer, that the tenant leaves the door to the house unlocked, that she pushes a bed up against an exit and that she has failed to provide proof of insurance coverage, I find shows on a balance of probabilities a complete disregard for the landlords and their property. I am satisfied that the tenant has engaged in conduct which has seriously jeopardized the health or safety or a lawful right or interest of the

landlord and which has put the landlords' property at significant risk. I therefore dismiss the tenants application and I will allow the landlords an Order of Possession effective on the date set out on the Notice to End Tenancy that is at 1 o'clock in the afternoon on April 15, 2012.

As the landlord has been successful in this application I will allow the landlords to recover the \$50.00 they have paid and they may deduct this sum from the security deposit.

Conclusion

The landlord is provided with a formal copy of an order of possession. This is a final and binding Order enforceable as any Order of 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*.

Dated: April 3, 2012.

Residential Tenancy Branch