



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking an order to cancel a one month Notice to End Tenancy issued for alleged cause, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Tenants submitted their documentary evidence late according to the rules of procedure and it was not considered. They gave oral testimony as to their evidence.

I have reviewed all oral and other written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

This tenancy began on June 30, 2008, with the parties entering into a written tenancy agreement and agreeing to rent of \$1,050.00 per month. The Tenants had paid a security deposit to the Landlord on or about March 31, 2007, as they had occupied a different rental unit at the same property and moved to the subject rental unit in or about June of 2008.

A term of the tenancy agreement allowed the Tenants to park one vehicle on the property. Another term required the vehicle to be in operating condition, licensed and insured for on-road use. The Tenants were told they could use one half of the carport.

Another term of the tenancy agreement required that garbage, waste, boxes or papers are not to be left in a parking area, driveway, patio or other common area.

The Landlord hired a property management company in September of 2011, and gave them instructions to have the Tenants clean the carport and property at the rental unit. The Landlord alleges that the Tenants have stored an unlicensed and unregistered vehicle on the property in addition to another vehicle they own and operate. The Landlord also alleges that the Tenants have allowed a large amount of garbage, waste and boxes to accumulate inside of the carport and to some degree in other common areas on the property. The Landlord alleges that the items in the carport belong to the Tenants and that they have stored tires inside the unlicensed vehicle.

The Agents for the Landlord allege that the accumulation of debris at the rental unit has caused an increase in rats around the property. One of the Agents testified that every time he visited the rental unit property he would see rats on the property.

The Agents testified they met with the Tenants in September of 2011 and made the request to clean up the property and deal with the vehicle.

In November of 2011, the Agents for the Landlord wrote to the Tenants and requested they clean up the carport and yard, and asked about the Tenants' plans for the vehicle. The Agents also informed the Tenants they were hiring a cleaner to clean the laundry room, storage room and common areas of the property.

In January of 2012, the Agents for the Landlord wrote the Tenants twice and requested they clean up the yard and carport and remove the unlicensed vehicle. The Agent explained what work was required to be done at the rental unit by the Tenants. The Tenants were cautioned that this was required in order to maintain the tenancy. They were given a deadline in February of 2011.

The Agents for the Landlord allege the Tenants did very little to clean up as requested and failed to deal with the vehicle. On March 16, 2012, the Agents for the Landlord served the Tenants the first one month Notice to End Tenancy for the alleged breach of the tenancy agreement.

According to the testimony, the first one month Notice issued was accidentally dated for March of "2011" and had an effective date of "April 30, 2011" rather than 2012. The Agent claims she served this Notice on the Tenants on March 16, 2012. The Tenants testified they got this Notice a few days after March 16, 2012.

The Tenants filed their Application to dispute the one month Notice to End Tenancy on March 27, 2012. They testified they had not received the second one month Notice at the time they filed their Application.

When the Agent realised the dates were incorrect, the Agent served the Tenants with a corrected copy, indicating an effective date of April 30, 2012 and an issue date of March 27, 2012. The Agent testified she served the Tenants that day with the corrected Notice.

The Tenants testified they did not get served with the second Notice to End tenancy until March 29, 2012. One of the Tenants testified he was home sick that day and heard a knocking on the door. When he looked out he saw the Agent, however, he thought this person was a canvasser. He testified that the Agent keep knocking louder and then was pounding on the door. He testified he heard the Agent say, "I know you are in there [Tenant's name], I can hear you" or words to that effect. The Tenant testified that the Agent then slipped the corrected second Notice under the door of the rental unit. It was then the Tenant realized the person was an Agent for the Landlord. The Tenant testified he felt this was an invasion of his privacy.

In January of 2012, the Tenants replied to the Agents requests to clean the rental unit and explained that a lot of the debris left in the carport was not theirs. They allege that there have been many renters come and go in the other rental units on the property and that most of the debris was left behind by these other people. They allege some of the debris belongs to the Landlord as it was left by painters who attended the property. They also testified that most of the debris was left behind last spring by a renter who moved out.

The Tenants testified that before the property management company came along, no one had complained about the vehicle or the state of the carport or yard. They testified they are the longest running renters at the property.

The Tenants testified they do not understand why other renters at the property have not been bothered by the Landlord or Agents. The Tenants feel they are being targeted and do not feel that cleaning up the whole carport is their responsibility. They testified that their side of the carport has been completely cleaned and tidied up.

The Tenants also testified that the vehicle had been sold by April 4, 2012, and is no longer on the property. The Tenants allege that the Agents for the Landlord opened the door to the vehicle to take pictures of the tires stored inside. The Agents deny this.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the one month Notice to End Tenancy is valid and should not be cancelled.

I find that the Tenants were repeatedly asked to comply with material terms of the tenancy agreement and failed to do so. I find the Tenants failed to clean and remove debris from the carport and they kept an unlicensed vehicle on the property. I find the Tenants did not address the concerns of the Landlord in a timely fashion and the Landlord had to make repeated requests for the Tenants to comply with the tenancy agreement. I find the Tenants breached the tenancy agreement and failed to correct the breaches after being given a reasonable amount of time to do so and after being warned the tenancy was in jeopardy. I note there was no evidence before me that proved the Tenants had complained at any time to the Landlord that other renters were leaving behind debris in the carport or other areas for the Tenants to deal with.

I found that significant portions of the Tenants' evidence lacked credibility. For example, the Tenants wrote on their Application on March 27, 2012, that they have now parked the vehicle on the street. Nevertheless, the Agents for the Landlord provided a photograph from April 2, 2012, showing the vehicle, with tires stored inside, parked well inside the carport amongst the debris. It is not possible with these of the photographs to determine whether or not the Agent for the Landlord opened the vehicle door to take pictures of the tires inside, and therefore, I make no findings on this issue.

I do not find the service of the second corrected Notice was an "invasion of privacy" of the Tenants. The Agents for the Landlord or the Landlord are allowed under the law to serve the Tenants at the rental unit.

Based on the testimony of the Tenants I find they were served in fact with the corrected second Notice on March 29, 2012. One Tenant testified he was there and saw the Notice being slipped under the door and I find they were served that day. Therefore, the effective date of the Notice remains as April 30, 2012.

I note that the evidence indicates the Tenants only disputed the first Notice served on them. They testified they were told by someone at the Branch that they did not have to amend their Application to dispute the second, corrected Notice, even though it was served on them after they filed their Application to dispute the first Notice. Failure to dispute the second Notice would have had the effect of the Tenants being conclusively presumed to have accepted the tenancy was ending on the effective date of the Notice.

However, pursuant to section 64(3)(c) of the Act, I amended their Application to include a request to deal with both Notices.

Having found that the Notice to end Tenancy is valid and should not be cancelled, I dismiss the Application of the Tenants.

At the end of the hearing, the Agents for the Landlord orally requested an order of possession for the rental unit if the Tenants' Application was dismissed. Having dismissed their Application, I must grant the Landlord's request for an order of possession pursuant to section 55 of the Act.

Therefore, I grant and issue an order of possession to be effective at **1:00 p.m. April 30, 2012**. This order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 17, 2012.

Residential Tenancy Branch