



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes

For the tenant: CNC, LRE, LAT
For the landlord: ET, FF

Introduction

This hearing was convened in response to an application filed on April 27, 2012 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated April 12, 2012 and received April 23, 2012, and to set conditions on the landlord's right to enter the rental unit, and to change the locks to the rental unit. The Notice to End was given with the reasons as:

- *Tenant has caused extraordinary damage to the unit/site or property*
- *Tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee.*

The landlord filed an application April 30, 2012 requesting an early end to the tenancy with an order of Possession. The landlord withdrew portions stipulated in the reasons contained in the Notice to End.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for sufficient reasons, and that at least one (1) reason must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy.

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions and affirmed / sworn testimony.

At the outset of the hearing the parties were afforded an opportunity to resolve their dispute. The landlord verbally requested that their Notice to End be upheld via an Order of Possession. The landlord seeks an early end to the tenancy based on the same

incident giving rise to the Notice to End, and in addition the same incident. However, the landlord

Issue(s) to be decided

Is there *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

Should the landlord's right to enter the rental unit be made conditional?

Should the tenant be authorized to change the locks to the rental unit/

Background and evidence

This tenancy began October 01, 2011 as a tenancy agreement inclusive of the tenant as a caretaker for the residential property, titled "Caretaker Lease Agreement". The term of the agreement is for one (1) year - *to September 30, 2012*. The relevant evidence is as follows.

The landlord testified they issued the Notice to End by registered mail in response to an incident on April 12, 2012 during which time the landlord claims the tenant's conduct toward them was threatening and intimidating, including an alleged uttered threat they would kill the landlord if they set foot in the tenant's yard. The parties do not dispute that a confrontation occurred on April 12, 2012. However, the tenant denies that he threatened and intimidated the landlord, and denies uttering the alleged threat they would kill the landlord if they set foot in their yard. None the less there is no dispute between the parties that the tenant took down an existing fence of the residential property and permanently relocated the property fence of the property with a metal link fence encompassing almost twice the previously fenced area - without authorization from the landlord. The landlord also claims the tenant has not maintained the residential property as per the Tenancy/Caretaker agreement. The landlord provided photographs of the fence and fenced area prior to April 12, 2012 as well as photographs of the current larger enclosed area by way of a metal link fence.

The tenant denies they have ever been threatening toward the landlord and did not utter that they would kill the landlord. The tenant also claims that they removed and relocated the fence as result of a previous discussion with the landlord - whom purportedly agreed to the change. The landlord strongly denies such a discussion ever occurred and that they did not authorize the enlargement or change of the fenced area or the fence structure. The tenant also claims that the landlord removed tools required to maintain the property, therefore could not maintain it.

The tenant also testified that the landlord has entered their rental unit without notice to them and as a result request to change the lock to the rental unit. The landlord testified they have provided proper notice to access the rental unit.

Analysis

Each party is responsible to prove their claims as advanced in their applications. The paramount consideration in this dispute is the viability of the tenancy. I have reflected carefully on all the relevant matters presented. On the preponderance of the evidence and testimony provided, and on the balance of probabilities I accept the landlord's testimony and evidence and I find the landlord has met the burden of proof in showing they had *sufficient* cause to end this tenancy on the basis the tenant : *has caused extraordinary damage to the unit/site or property*. I find the tenant did not provided evidence they had authority to alter the fence, or its structure, or the size of the fenced property area of the residential property; yet, removed the existing fence, enlarged the fenced area, and erected a permanent metal link structure encompassing the fenced area. As a result, I uphold the landlord's Notice to End as valid and effective to end the tenancy; and effectively, the tenant's application to cancel the landlord's Notice to End is **dismissed**, without leave to reapply. I find the landlord is hereby entitled to an **Order of Possession**. As the tenancy is ending, I find it unnecessary for me to consider the balance of the tenant's or landlord's applications and the remaining portions of the applications are hereby **dismissed**.

Section 55 of the Act, in part, states as follows:

Order of possession for the landlord

- 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.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

As the landlord was successful in their application they are entitled to recover the filing fee of **\$50.00**.

Conclusion

The tenant's application is **dismissed**. **I Order** the tenancy will end on the effective date of the Notice to End. I grant an **Order of Possession** to the landlord effective Thursday, **May 31, 2012**. This Order must be served on the tenant. Should the tenant then fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord may deduct **\$50.00** from the tenant's security deposit in satisfaction of the filing fee for this matter.

This decision is final and binding on both parties.

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: May 23, 2012

Residential Tenancy Branch