



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, LAT, FF

Introduction

This hearing was convened as a result of the tenants' successful application for review regarding the Decision and Order of Possession issued against them on May 11, 2012. That Decision of May 11, 2012, dismissed the tenants' original application due to not attending the hearing. Upon review, the reviewing Dispute Resolution Officer ("DRO") suspended the Decision and Order of Possession of May 11, 2012, and granted this review hearing.

This review hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"), applying for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), an order allowing the tenants to change the locks to the rental unit, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

Since the tenants filed their original application, they have moved out of the rental unit; therefore it was no longer necessary to consider their request seeking cancellation of the Notice or for an order authorizing the tenants to change the locks to the rental unit.

The hearing proceeded on the tenants' application for a monetary order and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and 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.

Preliminary Issues-According to the parties, no one received a Notice of Hearing; however, the parties called into the Residential Tenancy Branch ("RTB") and discovered the hearing date. I therefore proceeded on the basis that both parties were properly notified and in attendance, as neither party requested an adjournment.

Each party submitted evidence packages, the packages were reviewed and each party acknowledged receipt of the other's evidence.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and to recover the filing fee?

Background and Evidence

This month to month tenancy began on January 1, 2012, monthly rent was \$1500.00 and the tenants paid a security deposit of \$750.00 at the beginning of the tenancy on or about December 1, 2011.

I heard testimony that the rental unit was a single family dwelling located on acreage owned by the landlord; however the tenants had access to only the home, carport and yard while the landlord maintained the exclusive use and possession of the surrounding acreage, barn and workshop.

The tenants' monetary claim is \$1685.86, which includes picture developing for \$10.86, the \$50.00 filing fee, loss of the use of the yard for \$125.00 and "intentional infliction" for \$1500.00.

In support of their application the tenant stated that from the time the tenancy began until it ended, the landlord deprived them of their rights to quiet enjoyment, due to the constant harassment and intrusions on their privacy.

More specifically the tenant stated that the landlord required the tenants to inform them when they left the rental unit for in excess of three days and to feed and water the landlords' animals left at the barn.

The tenant submitted that they were the subject of constant harassment from the landlord, his family and neighbours, demanding to know where they were if they were gone for longer than three days, checking on the tenants to see if they were home, and frequent unannounced visits by the landlords. The tenant estimated that the landlord came by the home 4-5 times a week.

The tenant also submitted that a short time after the tenancy began, the landlord decided to sell the rental unit, which then led to frequent showings, according to the tenant. The tenant submitted that the landlord and his agent attempted to access the rental unit without the proper written notice, and that it then became necessary to direct the landlord's attention to his obligations under the Act regarding access by the landlord to the rental unit. In addition, the tenants submitted that they were lied about by the landlord to their real estate agent, which was confirmed by a prospective purchaser. In support of this contention, the tenant submitted a tape recording of a conversation he had with the real estate agent and the tenant, impersonating the prospective purchaser, at the purchaser's consent. The tenant also submitted a letter of an apology from the real estate agent.

The tenant submitted that they were issued frequent Notices to End the Tenancy by the landlord, six in all, as well as breach letters. After being gone for a short period of time in April, according to the tenants, when they returned home, there were 17 calls from the landlord.

On the last night of the tenancy, the landlord brought the police to the rental unit, who forced their way in, removing some of the tenants' personal property and papers. The tenants submitted that the landlord's actions in issuing the Notices and bringing the police caused them to vacate the rental unit, as they felt harassed and threatened.

In response, the landlord submitted that the tenants were bound contractually to inform the landlord if they were gone for longer than three days and to feed and water the horses. In support of this contention, the landlord stated they agreed to rent the home to the tenants as they were led to believe the tenants worked from home and would not be gone very long.

When questioned as to which contract the landlord referred, the reply was that the contract was verbal.

The landlord also submitted that if the rental unit was left vacant for more than three days, their homeowner's insurance was negatively impacted.

When questioned, the landlord denied coming by the rental unit 4-5 times per week, saying sometimes the visit was more in the way of a drive-by as the landlord has family in the area. The landlord also agreed that he had friends and family check up on the tenants, to ensure the animals were provided for.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

On a balance of probabilities and due to the landlord's confirmation and own written evidence, I find the tenants have established that the landlord has interfered with and deprived the tenant's of their right to quiet enjoyment, most particularly their right to privacy, by intruding on the tenants at the rental unit at frequent intervals or having their friends and family members invade the tenants' right to privacy by their frequent visits or drive-bys. I also find the landlord's frequent telephone calls and frequent Notices to end the tenancy also negatively impacted the tenants' right to privacy. The landlords

mistakenly believed they had the right to know of the tenants' whereabouts and to demand that the tenants feed their animals.

In reaching this conclusion, I was further persuaded by the landlord having no evidence to support his contention that the tenants were contractually obligated to inform the landlords of their whereabouts for absences in excess of three days or to care for their animals. Had the landlord produced such evidence, I would still make the finding that such requirements are in contravention of the Act and regulations and make the same decision that the landlord deprived the tenants of their right to privacy.

I was further persuaded by the necessity of the tenants to remind the landlord of his obligation under the Act in giving proper written notice to access the rental unit and by the landlord's insistence that his homeowner's insurance policy should be a concern for the tenants as regarding the issues raised.

Residential Tenancy Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed."

I therefore allow the tenant's application for monetary compensation. Due to the landlord's clear disregard to his obligations under the Act in giving the tenants their quiet enjoyment from the beginning of the tenancy, I find that the tenants suffered a diminished value of the tenancy for each month of the tenancy, more particularly January through May 2012. I find a reasonable amount to be \$300.00 per month, or a total of \$1500.00 (\$300.00 per month for the devaluation of the tenancy for the months of January through May 2012).

As to the tenant's request for compensation for loss of use of the yard, I find the tenants submitted insufficient evidence that they were deprived of the use of the yard. I therefore dismiss their request for \$125.00.

As to the tenants' request for photo developing expenses, the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I therefore dismiss their claim for \$10.86.

I find the tenants' application had merit and I award them recovery of the filing fee of \$50.00.

Conclusion

I find the tenants have established a total monetary claim of \$1550.00, comprised of compensation for the diminished value of the tenancy due to the loss of their quiet enjoyment in the amount of \$1500.00 and for recovery of the filing fee of \$50.00.

I grant the tenants a monetary order for \$1550.00.

The monetary order is enclosed with the tenants' Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

The Decision dismissing the tenants' application and Order of Possession issued in favour of the landlord, dated May 11, 2012, are hereby set aside.

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: June 18, 2012.

Residential Tenancy Branch