



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy for cause and to obtain a Monetary Order for money owed or compensation so damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued June 27, 2012, be cancelled?
2. Are the Tenants entitled to monetary compensation?

Background and Evidence

The parties agreed the Tenants had entered into a month to month tenancy with the previous owners which began on August 1, 2006. Rent is payable on the first of each month in the current amount of \$1,090.00 which includes parking. The Tenants paid \$492.50 on July 14, 2006 as the security deposit.

The Tenants submitted 24 pages of evidence in support of their application which included copies of: their written statement; a 1 Month Notice issued June 27, 2012; advertisements of units for rent in their building, letters between the parties dated November and December 2011; photos of various cats in the rental unit flower boxes; and various letters from other tenants.

The Landlords submitted 53 pages of evidence which included, among other things, copies of: photographs; the tenancy agreement; a breach notice from December 2011, the Tenant's note from December 2011; the 1 Month Notice dated June 27, 2012; other

tenants in the building who signed notices; witness statements; and documented health concerns from the BC Centre for Disease Control.

At the outset of the hearing the Landlord indicated they had a witness available to call into the hearing to provide testimony if necessary.

The Landlord and Agent affirmed that the 1 Month Notice (the Notice) was posted to the Tenants' door on June 27, 2012. The Tenants confirmed receipt of the Notice the same day.

The Landlord asserted that the Notice was issued to the Tenants for one reason, because they failed to keep their cat inside their unit. He stated that on December 22, 2011 they gave the Tenants the opportunity to add their cat to their tenancy agreement and that they instructed the Tenants that they had to keep the cat inside the unit and not let it outside on the property. When the Tenants continued to let their cat outside and defecate in the flower boxes they felt it necessary to issue them the eviction Notice.

The Landlord continued his testimony for reasons of issuing the Notice which were linked to the Tenants involvement with writing letters to other tenants in attempts to form a tenants' group to fight eviction notices. When I asked the Landlord if this was the reason the Notice was issued he said no.

The Agent testified that after she issued the December 22, 2011 letter about keeping their cat inside, the Tenants responded on December 24, 2011 with a message written on a post it note that indicated they were not going to agree to change their tenancy agreement.

Both the Agent and the Landlord confirmed that no other written notices or letters have been issued to the Tenants after December 22, 2011, about their cat being allowed outside the apartment. When I asked the Agent what had transpired immediately before issuing the Notice on June 27, 2012 she began to speak about these Tenants' involvement to fight against evictions for renovations.

The Agent went on to speak about her return from vacation on October 25, 2011 and how she noticed, upon her return, that the Tenants had placed signs and notices up in the elevator and laundry room and how she had heard they put notices in the mailboxes in their attempts to form a tenant's group to fight evictions. She said that this has caused them to lose numerous tenants, claiming that tenants are still moving out because of this and it is all to do with these Tenants. She stated that these actions have

caused excessive stress between her and the other tenants but that they did not issue the Notice for this reason because it was not enough to evict the Tenants.

The Agent then switched back to testimony about the Tenants' cat using the flower boxes as a litter box. She stated that she is outside the majority of the day and she has never seen any other cats in the area, only the Tenants' cat. She did confirm that other tenants have cats but they are always kept inside.

The Tenants refuted the Agent's testimony and pointed to photos they provided in their evidence which were taken on June 29, 2012 and July 1, 2012 and which clearly show three other cats on the property.

I asked the Agent when she first noticed the presence of a cat with these Tenants and she began by stating it was upon her return to the unit in July 2008 and then redirected her answer to state that she first noticed the cat in the fall, around October 2008 when she conducted the fire inspections. She confirmed there were no warnings issued about the cat until December 2011 and continued to say it was not an issue of the cat being outside until she found out they could apply for a grant if they provided a space for the tenants to plant a vegetable garden.

When I asked the Agent why she never issued a warning to the Tenants in the past about the cat walking around the building and outside on the property she stated that she had never seen the cat outside before this year and that the first time she noticed the cat outside was in April 2012 when she began working the gardens and flower beds. I then asked the Agent to clarify when her photos were taken of the Tenants' cat, which she responded by saying they were taken between April 3, 2012 and June 11, 2012 and it was not until June when she had definitive proof that the Tenants' cat used the flower box as a litter box.

The Tenants advised they are seeking \$4,905.00 which is comprised of one half of a month's rent for a total of nine months. They submitted that this is the length of time they have had to live with the underlying threat of being evicted. They stated that in July 2011, the Agent handed them a notice of rent increase and told them that the new owner would be renovating the rental units. They stated that the Agent offered them the opportunity to vacate their unit for 3 weeks during the renovations and that they could move back in and pay a higher amount of rent.

The Tenants stated that they refused the offer of renovations and later the Agent told them it has come down to a choice, they could move out during the renovations and pay higher rent upon their return or be issued an eviction notice for landlord's use of the

property and they would be given one month's rent as compensation. They refused this as well and when the Agent went on vacation they did some research on evictions and began to canvass other tenants to form a tenant's committee.

The Tenants confirmed posting notices in the elevator, laundry room, and one note in the mailboxes. She stated that once they formed their group and spoke with their MLA (Member of the Legislative Assembly), the Landlord stopped issuing notices under section 49 and began issuing evictions for other reasons. Then on December 9, 2011 they were issued the written warning about their cat while other tenants were making deals in order to keep their cats.

The Landlord and Agent refuted the Tenants' testimony stating they have never issued mass evictions. They confirmed there was one eviction notice that was challenged which they later mutually agreed with that tenant to end the tenancy.

I asked the Agent directly if she ever engaged in a conversation with these Tenants about renovating their unit, moving out of their unit and returning with higher rent, or moving out with a two month notice. The Agent denied ever speaking to the Tenants about renovating their unit and then stated she offered these Tenants the opportunity to see a newly renovated unit. She argued that she did not offer them to move out for three weeks because it takes longer than three weeks to renovate these units.

In closing the Tenants stated that it was obvious there was an underlying issue as to why they were issued the June 27, 2012 Notice and argued that they have been targeted for reno-viction. They stated that their cat is cited as the reason for eviction however it is obvious there is a deeper issue and the notice was issued in bad faith. They state that their entire life has been affected waiting for the eviction to be issued, they have had their cat reside elsewhere for this last month, they have put their family planning decisions on hold, and they have waited in the wings wondering if their rent will be increased or if they will be faced with having to move. They argued that it has become unbearable to reside in this building at which point I offered the parties the opportunity to settle these matters.

The Landlord confirmed they had renovated 18 out of 42 units and noted that they only renovate units which become vacant. The Landlord advised that in the event they could not reach a settlement prior to the end of this hearing they were seeking an Order of Possession to end this tenancy.

A discussion ensued in an attempt to settle these matters; however, the parties were not able to come to an agreement. The hearing time expired at which point I concluded the hearing.

Analysis

When a tenant applies to have a Notice to end tenancy cancelled the onus lies with the Landlord to prove the reasons for ending this tenancy.

Upon review of the foregoing I favor the evidence of the Tenants over the Agent's evidence. The Tenants stated there is an underlying issue for being evicted and it is not because they have allowed their cat to go outside. The Agent provided evidence that the eviction was due to the cat being outside and that she has never seen the cat outside before this year. I favored the evidence of the Tenants over the Landlord, in part, because the Tenants' evidence was forthright and credible. The Tenants readily acknowledged that they have had a cat since 2008, that this cat has been allowed to roam freely outside, and that they posted notices and letters in the elevator, laundry room, and mailboxes and formed a tenant's committee.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord's explanation that she has never seen the cat outside before this year or that she has never seen other cats outside to be improbable. The Agent contradicted her own testimony throughout this proceeding, first saying she issued the written notice to keep the cat inside in December 2011 and then she said she had never seen the cat outside prior to this spring, April 2012. Why would she issue a notice to keep a cat inside four months before she ever saw the cat outside? Furthermore, I question the Agent's response to my questions about having discussions about renovations when tenants are joining together to seek assistance from their MLA to avoid the threat of eviction for renovations. Rather, I find the Tenants' explanation that people were being evicted in order for the Landlord to renovate and collect higher rents to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find the Landlord has failed to provide sufficient evidence to prove that the Tenants allowing their cat to roam free outside has put the Landlord's property at significant risk or that the Tenants have breached a material term of their tenancy agreement by having a cat. The cat has resided with the Tenants for six years, five years prior to this owner purchasing the building; therefore the new owner cannot change the residency of the cat. Accordingly, I hereby cancel the 1 Month Notice issued June 27, 2012.

The Tenants seek compensation of \$4,905.00 for having to live with the underlying threat of being evicted. This amount is based on nine months at one half of their monthly rent. The Tenants had full use of the rental unit and common areas however they alleged that they were under constant stress wondering when they would be issued an eviction notice. They noted that when it was finally issued it was issued in bad faith.

The *Residential Tenancy Policy Guideline #6* stipulates that in order to prove a loss to quiet enjoyment it would be necessary to show a course of **repeated or persistent** threatening or intimidating behaviour [emphasis added].

In this case there is an allegation that the Agent verbally informed the Tenants that they would be evicted by November 2011, and there is evidence that the Agent issued two written warnings in December 2011 pertaining to the Tenants' cat. That being said, there was no further communication between the parties in relation to a pending eviction until June 27, 2012 when the 1 Month Notice was issued.

Upon review of the foregoing, I find it undeniable that there was insufficient evidence to prove cause for ending this tenancy. That being said, there is also insufficient evidence to prove the Tenant's quiet enjoyment of the rental unit has been significantly affected to warrant monetary compensation at this time, and therefore the Tenants' claim for \$4,905.00 is dismissed.

The Landlord is cautioned that repeated attempts to evict a tenant, without cause, may form a loss of quiet enjoyment to which the tenant would have the right to seek monetary compensation.

The Tenants have been successful in disputing the Notice; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The 1 Month Notice to end tenancy for cause issued June 27, 2012 is **HEREBY CANCELLED** and is of no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants' may deduct the one time award of **\$50.00** from their next rent payment, as full satisfaction of recovery of their filing fee.

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: July 24, 2012.

Residential Tenancy Branch