



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MND, FF

Introduction

The tenant applies to cancel a Notice to End Tenancy given for Cause, for a monetary order for compensation and for recovery of the filing fee paid for this application.

Both parties attended the hearing and gave evidence under oath.

Issues(s) to be Decided

Does the landlord have cause to end this tenancy? Should the tenant receive compensation for damage and/or loss and recovery of the filing fee?

Background and Evidence

The landlord served a Notice to End Tenancy for cause on October 22, 2012. The landlord says that the tenant has significantly interfered with the landlord. The landlord says she is attempting to sell the rental unit but the tenant is not cooperating with the realtors and thwarting their attempts to show the rental unit. The landlord therefore wishes to end this tenancy.

The tenant submitted a decision from a previous hearing with previous hearing held on October 4, 2012. The tenant testified that the landlord had previously served him with a 1 month notice to end tenancy for Cause which was cancelled at that hearing. Further the landlord was ordered to comply with the Act and provide at least 24 hours written notice of entry into the unit. In addition the landlord's right of entry was restricted to occur only when one of the tenants are present. The tenant submits that despite this Order the landlord's agents refuse to provide proper notice of their intention to show the suite.

The tenant says that he has had to defend myself against both notices and in so doing he made 5 different trips to the Residential Tenancy Branch in Burnaby BC each trip taking 2.5 and 4 hours depending on how busy the Branch was. The tenant says that he is a commissioned salesman and the \$2,000.00 he is claiming does not come close

to covering the potential loss of income that he has incurred given the time he has had to take away from work to deal with these matters. Further that the landlord and her agents have violated his rights to quiet enjoyment with harassing phone calls and messages.

The landlord says she lives in the US and she has told her realtors here in Richmond, BC what they need to do and they have reassured here that they are posting a 24 hour written notices to the rental unit door. The landlord says that despite her realtors' efforts the tenant is not complying with their requests to show the suite. The landlord says she just does not know what else to do that the tenant has thwarted some 25 showings.

The tenant says this is absolutely false. The tenant says there has been only 2 occasions when a notice has actually been posted to his door and both of these occasions were after the landlord issued the Notice to End Tenancy for Cause which is under dispute in this application.

Analysis

The tenant has disputed a Notice to End this tenancy for cause issued by the landlord, the onus or burden of proof is on the party making the claim, in this case that is the landlord who is seeking to end this tenancy. The landlord must bring sufficient evidence to show she has cause to end this tenancy. However, when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has failed in his burden of proving she has cause to end this tenancy. The tenant's application is therefore allowed and the Notice to End Tenancy is set aside.

With respect to the tenant's claim for compensation for loss, the evidence shows that the landlord issued a previous Notice to End this tenancy which was set aside at a hearing on October 4, 2012. In that Decision the landlord was ordered to comply with the Act with respect to entry into the rental unit and her rights to enter the rental unit have been restricted to ensure at least one of the tenants is present upon entry. The landlord then issued a second Notice which is the subject of this hearing and this notice has also been set aside. In this hearing the landlord seemed vague as to her knowledge of her realtor's activities, apparently choosing to throw her hands up in frustration because she lives in the U.S. rather than take steps to ensure that her realtors are following this order. I found her lack of diligence in this regard to be troubling. In any event, I find that the tenant has suffered a loss in having to defend himself against two Notices to End Tenancy for cause issued in quick succession and in

both circumstances found to be without sufficient proof of cause. Given these facts I find that the tenant is entitled to some compensation other than the simple recovery of the filing fee. I will award him \$500.00. This is a somewhat arbitrary figure and not the figure the tenant claimed however, in the circumstances I find it to be sufficient.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy is cancelled. The effect of this decision is that this tenancy shall continue beyond the effective date set out on the Notice to End Tenancy issued in this matter.

With respect to the tenant's monetary award and recovery of the filing fee, the tenant may deduct \$550.00 from his next rental payment.

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: December 03, 2012.

Residential Tenancy Branch