



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, MNDC, OLC, LRE, AAT, MNR

Introduction

This hearing dealt with an application by the tenant to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), confirmed by the parties to have been received by the tenant February 01, 2013, with an automatically adjusted effective date of April 30, 2013 [Section 53 – Residential Tenancy Act (the Act)].

The tenant also seeks compensation for loss of quiet enjoyment, and for the landlord's right to enter the rental unit be made conditional or be suspended, and for the tenant and their guests to be allowed access to the rental unit. The tenant made application for the cost of emergency repairs, but did not expand on this claim or provide a monetary claim for this portion of their application. Therefore, this portion of their claim is preliminarily **dismissed**.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the dispute and to make relevant prior submissions to the hearing and to participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. At the outset the landlord requested an Order of Possession if I upheld the Notice or dismissed the tenant's application.

Issue(s) to be Decided

Is the notice to end tenancy valid and issued for valid reasons?
Should the Notice to End dated January 31, 2013 be set aside?
Is the landlord entitled to an Order of Possession?
Should the landlord's right to enter be made conditional or be suspended?

The burden of proof rests with the landlord to provide evidence that the Notice was validly issued for stated and sufficient reasons.

Background and Evidence

The parties have previously been engaged in a dispute resolution hearing. The tenancy

began February 01, 2012. Rent in the amount of \$400.00 per month is payable on the 1st. of each month. The tenant submitted a copy of the Tenancy Agreement and the Notice to End. The landlord did not advance or provide document evidence. The rental unit is the cabin on the same residential property as the landlord occupies in the main house of the property.

The Notice to End was issued for the sole reason that: *the rental unit will be occupied by the landlord or the landlord's spouse or close family member of the landlord or the landlord's spouse*. The tenant disputes the Notice to End.

Under oath, the landlord stated that on May 01, 2013 they intend to occupy the rental unit themselves and utilize their current residence for an abundance of personal guests over the upcoming summer months. As well, the landlord testified that their daughter is, in the steps of relocating with their family from another country, and plans to occupy the landlord's current residence.

The tenant claims the landlord is not being truthful, and is not acting in good faith - simply planning to use the rental unit for accommodate summer guests. Upon repeated questioning, the landlord stated they would occupy and use the rental unit for themselves. The landlord also testified under affirmation that "in good faith", they will physically move and assume the rental unit as their accommodation.

The tenant provided testimony that in the month prior to receiving the Notice to End the landlord told them they needed the rental unit so as to accommodate their summer guests. The landlord did not deny they intend to have guests stay with them in the summer, but that the guest would be staying in the main house they currently occupy, and that in the future those accommodations would fulfill another purpose, such as housing her daughter's family. The tenant testified the landlord then told them that if they did not sign a new temporary tenancy agreement they would be given a 2 month Notice to End, which the landlord stated was their attempt to avoid forcibly "evicting" the tenant by giving the tenant a 2 Month Notice. The tenant claims the landlord then asked them to sign a new 4 month tenancy agreement or the landlord would give the tenant a 2 Month Notice to End. Again, the landlord testified they wanted the tenant to commit to only staying until their planned intended move into the rental unit by the summer, or they would be forced to give the tenant a 2 Month Notice to End. They also testified they needed to renovate (clean and paint) the rental unit before moving in themselves. The landlord testified they repeatedly tried to get the tenant to vacate on terms that did not require them to be force to vacate, but the tenant refused. The tenant claims they currently have rent they can afford as they are on limited income and have no incentive to vacate voluntarily.

The tenant also seeks a monetary claim, which they previously had withdrawn; but, as a result of the landlord's perceived "bad faith behaviour" of "lies and manipulation" the tenant claims they are reinstating and adding to their claim for compensation in the sum amount of \$800.00.

The tenant claims the landlord breached their right to quiet enjoyment on 2 occasions prior to the last hearing in November 2012. On the first occasion, the tenant claims the landlord entered the rental unit to turn off the tenant's portable heater which had been left on during their absence. The tenant claims the landlord simply wanted to save on the power utility. The landlord testified that they were concerned for fire safety reasons. On the second occasion the tenant claims the landlord shut off the tenant's electrical utility for 2 hours in August 2012 without legal cause in response to the tenant having a female guest – which the landlord did not deny or dispute.

In addition, the tenant claims the landlord has caused them undue stress and loss of quiet enjoyment by confronting and questioning certain guests when on the residential property, telling guests they cannot be in the rental unit, informing other people in public and guests of the tenant that the tenant is going to be evicted, threatening to evict the tenant in public, telling the tenant they should move out or face eviction, and accusing the tenant of being a 'drug dealer'. Other than explaining that others have told them the tenant is a drug dealer - the landlord did not effectively dispute all the above incidents during the hearing. The tenant claims that in a small and familiar community as in which they reside they have been left feeling humiliated and frustrated.

Analysis

It must be noted that during the previous hearing the landlord and tenant discussed the landlord arbitrarily turning off the electricity to the rental unit. Both parties were advised then that the practice is unacceptable and illegal. The tenant resurrected this same claim and also seeks for the landlord's right to enter the rental unit be made conditional or be suspended. I find the latter request is not necessary, but I find the tenant is entitled to compensation for the breach in the amount of **\$200.00**, without leave to reapply.

I find the landlord's entrance of the rental unit to turn off an energized portable heater in the absence of anyone home, on balance of probabilities, satisfies the landlord's right to enter the unit in order to protect property - in accordance with Section 29(1)(f) of the Act. Therefore, **I dismiss** the tenant's claim based on this portion of their claim.

I find the landlord's response to the tenant's assertions the landlord breached their quiet enjoyment effectively went unchallenged by the landlord, giving evidentiary weight and preference to the tenant's assertions and testimonial evidence. On balance of probabilities, I find the landlord's conduct breached the tenant's right to quiet enjoyment, and as a result I grant the tenant compensation in the amount of **\$600.00**, without leave to reapply.

Residential Tenancy Policy Guideline 2, in part, states as follows in respect to the matter of the Notice to End. The full text may be viewed at www.rto.bc.ca.

Good faith requirement

A claim of good faith requires honesty of intention, with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If evidence shows that the landlord's purpose in issuing a Notice to End Tenancy is for a reason other than the one stated on the Notice to End Tenancy, then that evidence raises a question as to whether the landlord had a dishonest purpose. The Residential Tenancy Branch may find that the landlord had a dishonest purpose even if that dishonest purpose was not the primary motive for ending the tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

In this case I find the landlord's conduct and behavior toward the tenant over the course of the tenancy clearly caused a disruption in the tenant's quiet enjoyment, for which the tenant has been compensated. However, I find the landlord has been consistent in their quest to end the tenancy with the intent to personally occupy the rental unit themselves and repurpose their current accommodations. Despite the tenant's suspicions, I accept the landlord's testimony that their efforts employed to end the tenancy – despite their lack of proper process – are honest in their intent to end the tenancy so as to use the rental unit for the purpose stated on the Notice to End. I find that if the landlord has an ulterior motive it has not been revealed by the evidence of this matter. As a result, I uphold the landlord's Notice to End Tenancy as valid, and the landlord is entitled to an **Order of Possession**, to take effect no sooner than the effective date of the Notice to End Tenancy – April 30, 2013. The tenancy will end and the landlord must provide the tenant with the requisite compensation equivalent to one month's rent under the tenancy agreement, on or before the end of the tenancy. The Act also provides that the tenant may simply withhold the authorized amount from the last month's rent.

Conclusion

The tenant's application to cancel the Notice to End Tenancy **is dismissed**.

The tenant's application for a monetary claim has been **granted** and the remainder of the tenant's claims have been **dismissed** – all without leave to reapply.

I grant an Order of Possession to the landlord effective **April 30, 2013**. The tenant must be served with this **Order of Possession**. Should the tenant 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 grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$800.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision and Order are 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: March 11, 2013

Residential Tenancy Branch

